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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SACRAMENTO, CALIFORNIA

Date:

JUL 30 2010

IN RE:

APPLICATION:

Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1961)

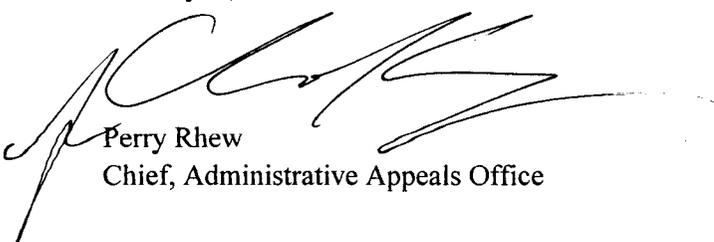
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Sacramento, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Philippines on January 22, 1961, to [REDACTED]. [REDACTED] The applicant's parents were married at the time of the applicant's birth. The applicant's mother acquired U.S. citizenship upon her birth abroad to a U.S. citizen parent. The applicant's father was born in the Philippines and was not a U.S. citizen at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her mother.

The director found that the applicant failed to establish that her mother was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. *See Decision of the Field Office Director*, dated Aug. 28, 2009. The application was denied accordingly. *Id.* On appeal, the applicant claims through counsel that the evidence is sufficient to show that her mother met the physical presence requirements. *See Form I-290B, Notice of Appeal*, filed Sep. 30, 2009; *Brief in Support of Appeal*.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1961. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.<sup>1</sup>

Former section 301(a)(7) of the Act stated that the following shall be nationals and citizens of the United States at birth:

a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

The applicant must therefore establish that her mother was physically present in the United States for no less than ten years before her birth on January 22, 1961, and that at least five of these years were after her mother's fourteenth birthday on January 15, 1955. *See id.*

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<sup>1</sup> Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

In support of the applicant's claim that her mother resided in the United States from 1945 to 1961, the applicant submitted six affidavits from individuals stating that the applicant's mother resided in the United States during the period claimed. *See Affidavits of* [REDACTED]

[REDACTED] The record also contains, among other things: a Certificate of Citizenship for the applicant's mother, issued with the name [REDACTED]; a copy of the applicant's mother's U.S. passport, showing what appears to be an arrival notation from the Philippine Immigration Service on October 18, 1961; a social security summary statement showing earnings of the applicant's mother for selected years during the period from 1963 to 1999; a letter from counsel to the California Department of Education requesting school records for [REDACTED] and a letter from the [REDACTED] [REDACTED] indicating that school records for [REDACTED] from 1946 – 1954 no longer exist.

Here, the applicant has failed to establish by a preponderance of the evidence that her mother was physically present in the United States for ten years before the applicant's birth in 1961. First, the six affidavits submitted by the applicant are short, similar, and lacking in detail regarding the affiant's relationship with the applicant's mother, and the basis for the affiant's knowledge of her mother's residence during her childhood. Accordingly, the affidavits do not establish the applicant's mother's physical presence in the United States. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

Second, the applicant's parents' marriage certificate shows that they married in the Philippines on January 15, 1960, and that both parents were residents of San Juan, Rizal. *See Marriage Certificate of* [REDACTED] dated Feb. 1, 1963. That residence information conflicts with the claim that the applicant's mother resided in the United States, and the date of marriage conflicts with the assertion in several of the affidavits that the applicant's mother returned to the Philippines to marry in 1961. *See Affidavits of* [REDACTED]

[REDACTED] Third, the information provided in the applicant's mother's Application for a Certificate of Citizenship conflicts with the applicant's claim that her mother resided in the United States from 1945 to 1961. Specifically, the applicant's mother stated that she arrived in the United States on October 19, 1963, and that her only absences from the United States since her first arrival were in 1965 and 1966. *See Form N-600 of Mercedes R. Garcia*, filed Nov. 8, 2007.<sup>2</sup> Finally, none of the remaining documents in the record corroborate the applicant's mother's physical presence in the United States before the applicant's birth.

<sup>2</sup> The AAO notes that counsel for the applicant also represented the applicant's mother in connection with her Application for a Certificate of Citizenship. *See Notice of Entry of Appearance as Attorney or Representative, Form G-28*, dated Sep. 28, 2007 (confirming representation for [REDACTED]). Accordingly, counsel had notice of the conflicting information.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Further, it is incumbent on the applicant to resolve any inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has failed to resolve inconsistencies in the record regarding her mother's physical presence in the United States before her birth and has not established by a preponderance of the evidence that she is eligible for citizenship under former section 301(a)(7) of the Act. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.