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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: DENVER, CO

Date:

JUN 02 2010

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1973).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 9, 1973 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's father was born in Colorado on October 27, 1942, the son of [REDACTED]. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The District Director determined, in relevant part, that the applicant had failed to establish that his father was a U.S. citizen. The director noted that there was a Mexican birth certificate relating to the applicant's father indicating that he was born in Mexico on October 12, 1945. The application was accordingly denied.

On appeal, the applicant maintains that his father is a U.S. citizen.¹ The applicant attempts to explain why his father's birth was registered also in Mexico, but reaffirms that his father's actual place of birth was Rocky Ford, Colorado. The applicant submits the results of a DNA test evidencing that [REDACTED] was the applicant's paternal grandmother, and not Maria de Jesus Lopez, the mother's name listed on the Mexican birth certificate.

The AAO notes that "[t]he 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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (citations omitted). The applicant was born in 1973. Former section 301(a)(7) of the Act is therefore applicable to this case.

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 and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than ten

¹ The record contains a Form G-28, Notice of Entry of Appearance as Attorney, signed by [REDACTED] who stated that he was an attorney and a member of the bar in good standing with the Colorado Supreme Court. Subsequent to the filing of this appeal, the Colorado Supreme Court suspended [REDACTED] from the practice of law on July 27, 2009. To date, [REDACTED] has not been reinstated. *Attorney Disciplinary History*, Colorado Supreme Court, available at: <http://www.coloradosupremecourt.com> (last accessed Jun. 1, 2010). Accordingly, [REDACTED] is not entitled to represent the applicant in these proceedings. *See* 8 C.F.R. §§ 1.1(f), 103.2(a)(3).

years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Former section 301(a)(7) of the Act, thus requires that the applicant establish that his father was physically present in the United States for at least 10 years prior to 1973, five of which after October 27, 1956 (the applicant's father's fourteenth birthday). At the outset, the applicant must establish that his father was a U.S. citizen.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, including the evidence submitted on appeal, the AAO finds that the applicant has established, by a preponderance of the evidence, that his father was born in Rocky Ford, Colorado. The Mexican birth certificate purportedly relating to the applicant's father indicates that his father was born in 1945, and lists someone other than [REDACTED] as his mother. The Mexican birth certificate is of little probative value given the preponderance of the evidence indicating that the applicant's father was born in the United States. The record contains a copy of the applicant's father's Colorado birth certificate, showing that his father's birth was registered in the United States shortly after his birth. The Colorado birth certificate states that the applicant's father was born on October 27, 1942 and that his mother was [REDACTED]. The applicant also submitted his father's U.S. Armed Forces Forms DD-214, which state the applicant's father's date and place of birth as October 27, 1942 in Rocky Ford, Colorado. On appeal, the applicant also submitted DNA evidence indicating that the applicant's father was the son of [REDACTED]. In addition, the applicant's father's elementary school records show that he was enrolled in the First Grade in 1948 in Colorado. The school records note the applicant's father's age as five years old in 1948 and state his mother's name as [REDACTED]. Accordingly, the preponderance of the evidence demonstrates that the applicant's father was born a U.S. citizen.

The applicant has also established that his father had the required physical presence in the United States to transmit citizenship to the applicant under former section 301(a)(7) of the Act. The applicant submitted his father's school, social security, and military records. These records show that his father attended school in Colorado from 1948 to 1957, honorably served in the U.S. Army from 1961 to 1964, and earned income in the United States from 1959 through 1973 (and in later years). The record thus shows that the applicant's father was physically present in the United States for 10 years prior to the applicant's birth, including five years after his father turned 14.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has met his burden of proof, and his appeal will be sustained.

ORDER: The appeal is sustained.