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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**

E<sub>2</sub>

FILE:

Office:

Date:

JUN 04 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) (1981).

ON BEHALF OF APPLICANT:

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,

Chief, Administrative Appeals Office

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

The record reflects that the applicant was born on January 31, 1981 in Mexico. The applicant's parents are [REDACTED]. The applicant's father was born in Mexico on March 3, 1959, but acquired U.S. citizenship at birth. The applicant's parents were married in Mexico on June 30, 1976. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The Field Office Director found that the applicant had failed to establish that his father had been physically present in the United States as is required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1972).<sup>1</sup> The Field Office Director noted in his decision that the applicant's attorney conceded that the applicant's father did not have the required physical presence in the United States. The Field Office Director also determined that the applicant did not derive U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433, because he was over the age of 18.<sup>2</sup>

On appeal, the applicant states that his attorney mistakenly requested U.S. citizenship on his behalf through his grandmother and not his U.S. citizen father. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant indicates that more evidence relating to his father would be submitted. However, no additional evidence has been received by this office as of this date. The record is, therefore, complete and ready for adjudication.

"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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001) (citations omitted). The applicant was born in 1981. 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:

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<sup>1</sup> Former section 301(a)(7) of the Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

<sup>2</sup> The AAO notes that the Field Office Director cites to section 322 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The applicant, however, is ineligible for benefits under the CCA because he was over the age of 18 on its effective date (February 27, 2001). See CCA § 104. Moreover, section 322 of the Act, before and after the CCA's amendments, requires the adjudication and approval of an application, and administration of the Oath of Allegiance, prior to an applicant's eighteenth birthday. See section 322(b) of the Act.

[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 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 1981, five of which after March 3, 1973 (the applicant's father's fourteenth birthday).

The record in this case contains, in relevant part, a copy of the applicant's birth certificate, his parent's marriage certificate, his father's certificate of citizenship, documents relating to the applicant's paternal grandmother, and copies of the applicant's school records. A note in the applicant's Form N-600, Application for Certificate of Citizenship, indicates that the applicant's father resided in Mexico from birth in 1959 until 1969, thereafter commuting to the United States to work for seven or eight years, and did not return to the United States until 1988.

Upon review of the evidence in the record, the AAO finds that the applicant has not established that his father had the required ten years of physical presence in the United States prior to 1981 (five of which after 1973) in order to transmit U.S. citizenship under former section 301(a)(7) of the Act. The AAO concludes therefore that the applicant did not acquire U.S. citizenship under this or any other provision of the Act.

The Supreme Court has explained that there "must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.