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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DALLAS, TEXAS Date: JUN 18 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1956)

ON BEHALF OF PETITIONER:

[redacted]

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, Dallas, Texas. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen the appeal will be granted, and the appeal will be dismissed.

The record reflects that the applicant was born in Mexico on February 1, 1956, to [redacted] The applicant's parents were married at the time of the applicant's birth. The applicant's father was born in the United States on March 14, 1921. The applicant's mother was born in Mexico and is not a U.S. citizen. 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 father.

The Field Office Director found that the applicant failed to establish that her father 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 May 5, 2008. The application was denied accordingly. *Id.* On appeal, the applicant claimed through counsel that the evidence was sufficient to show that her father was physically present in the United States during the applicable time periods. *See Form I-290B, Notice of Appeal*, filed June 5, 2008; *Brief in Support of Appeal*. On December 18, 2008, U.S. Citizenship and Immigration Services (USCIS) issued a request for additional evidence of the applicant's father's residence in the United States. *See Form N-14*, dated Dec. 18, 2008. On January 15, 2009, counsel indicated that the applicant was unable to obtain additional information, and requested adjudication of the case on the current record. *See Letter from Counsel*, dated Jan. 15, 2009. On September 25, 2009, the AAO summarily dismissed the applicant's appeal because the Notice of Appeal did not address the specific grounds upon which the application was denied, and the record did not include a copy of the applicant's brief on appeal. *See Decision of the AAO*, dated Sep. 25, 2009. The applicant filed a motion to reopen on October 14, 2009, contending through counsel that her brief on appeal was timely filed. *See Form I-290B, Notice of Appeal or Motion*, filed Oct. 14, 2009. Because the record now contains a copy of the applicant's brief on appeal, the AAO will reopen the appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision on appeal.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1956. Accordingly, former section 301(a)(7) of the Act controls her claim to derivative citizenship.[1]

[1] 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.

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 father was physically present in the United States for ten years before her birth on February 1, 1956, and that at least five of these years were after her father's fourteenth birthday on March 14, 1935. *See id.*

The record contains the following evidence relating to the applicant's father's physical presence in the United States: a Delayed Birth Certificate, filed in 1953, indicating that [redacted] was born on March 14, 1921, in Cameron County, Texas; a Certificate of Baptism showing that [redacted] was baptized on August 6, 1922, in San Benito, Texas; a U.S. Census form, dated March 24, 1934, indicating that [redacted] and his family lived in Cameron County, Texas, and had resided there for 14 years; and a short sworn statement from [redacted] dated March 26, 2001, stating that the author has known [redacted] since 1935, and that they "grow-up [sic] together when [they] were kids."

The record also contains: a delayed birth certificate for [redacted] older sister, who was born in Texas on October 18, 1918; a birth certificate for [redacted] younger sister, who was born in Texas on March 10, 1930; a Certificate of Citizenship for [redacted] the applicant's younger brother; and earnings statements showing that [redacted] was employed in the United States from 1965 to 1979 and from 1981 to 1984.

Here, the preponderance of the evidence shows that the applicant's father was born in the United States, and that he resided in the United States until the time of the U.S. census in 1934. However, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for at least five years after his fourteenth birthday in 1935 and before the applicant's birth in 1956. First, the sworn statement from [redacted] which indicates that the author has known [redacted] since 1935, fails to provide any details to corroborate the claimed friendship and [redacted] 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 earnings statements for [redacted] post-date the applicant's birth, and therefore do not support the applicant's claim that her father resided in the United States during the requisite period. *See* former section 301(a)(7) of the Act. Third, although counsel contends that the issuance of a delayed birth certificate for [redacted] in 1953 indicates that he was in

the United States at that time, the record lacks evidence to support this claim. *See Delayed Birth Certificate* (signed by witnesses [redacted]).

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). The applicant has failed to establish by a preponderance of the evidence that her father was physically present in the United States for at least five years after his fourteenth birthday and before the applicant's birth in 1956. Accordingly, the applicant is not eligible for citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.