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: [redacted] Office: EL PASO, TX Date: JUN 24 2010

IN RE: Applicant: [redacted]

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) (1964).

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.

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, 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 March 6, 1964 in Mexico. The applicant's parents, as indicated on his birth certificate, are and The applicant's father was born in Texas on October 26, 1930. The applicant's parents were married in Texas in 1972. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.[1]

The Field Office Director determined, in relevant part, that the applicant had failed to establish that his father had the required physical presence in the United States to transmit U.S. citizenship under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1964). The application was accordingly denied.

On appeal, the applicant maintains that his application should be granted because his older brother obtained U.S. citizenship from the same U.S. citizen father. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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 1964. 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 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.

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[1] The AAO notes that the applicant previously filed a Form N-600, Application for Certificate of Citizenship, in 1997. The application was denied in 1998, and not appealed. The regulation at 8 C.F.R. § 341.6 provides, in relevant part, that any subsequent application must be rejected and the applicant instructed to submit a motion to reopen or reconsider in accordance with 8 C.F.R. § 103.5.

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 1964, five of which after October 26, 1944 (the applicant's father's fourteenth birthday).

The record contains, in relevant part, a copy of the applicant's and his father's birth certificates, a social security earnings record, an affidavit by the applicant's father, and the applicant's parents' marriage certificate. The record also contains copies of documents obtained from the applicant's brother's administrative file, including the applicant's brother's certificate of citizenship.

The AAO finds that the evidence in the record does not establish that the applicant's father was physically present in the United States for 10 years prior to 1964. The applicant claims that his father was present in the United States, in relevant part, from 1946 to 1954 and 1954 to 1972. The social security earnings report does not corroborate the applicant's claim, as it indicates little or no earnings during those years. The record does not contain any other evidence regarding the applicant's father's residence. The AAO notes that the fact that the applicant's older brother obtained a certificate of citizenship bears no relevance to the applicant's case, as each case must be evaluated on the basis of the facts and evidence presented. The AAO thus concludes that the applicant's father did not transmit U.S. citizenship to the applicant under former section 301(a)(7) of the Act.

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.