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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: DALLAS, TX

Date: **MAR 25 2010**

IN RE:

Applicant:

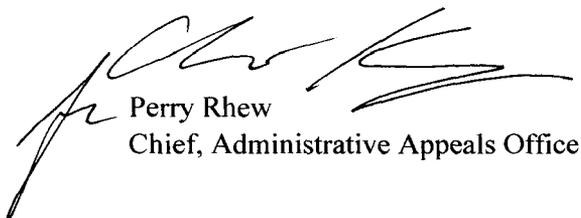
APPLICATION:

Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)(1974).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Dallas, Texas, 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 November 10, 1974 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1957. The applicant's father was born in Mexico in 1932, but acquired U.S. citizenship at birth through his parent. The applicant claims that she acquired U.S. citizenship at birth through her father pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1974).

The field office director denied the applicant's claim upon finding that she had failed to establish that her father had the required physical presence in the United States. On appeal, the applicant, through counsel, maintains that the director failed to properly consider the evidence submitted.

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, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1974. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), provided 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.

Under former section 301(a)(7) of the Act, a parent's physical presence in the United States may be in any status. *See* 7 FAM § 1133.3-3(a)(2).¹ In this case, the applicant must thus establish that her father was physically present in the United States for 10 years prior to 1974, five of which after attaining the age of 14 (in 1946).

The record contains sufficient evidence to establish that the applicant's father was physically present in the United States for at least 10 years prior to 1974, including five years between 1946 and 1974.

¹ 7 FAM 1133.3-3(a)(2) states, in pertinent part that:

(2) Naturalized citizens may count any time they spent in the United States or its outlying possessions both before and after being naturalized, regardless of their status. Even citizens who, prior to lawful entry and naturalization, had spent time in the United States illegally could include that time.

Specifically, the AAO notes the applicant's father's extensive immigration and employment records dated between 1959 and 1974. The records do not merely establish the applicant's father's presence in the United States on the specific dates the documents were issued; but as immigration and employment records, they demonstrate that it was more likely than not that the applicant's father was in the United States for the required period.

The documents in the record establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States as required for the applicant to acquire U.S. citizenship at birth pursuant to 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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.