



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEW ORLEANS, LA

Date:

MAR 25 2010

IN RE:

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) (1957).

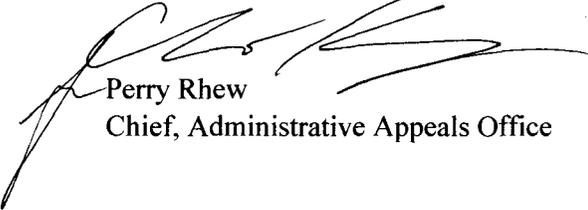
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting Field Office Director, New Orleans, Louisiana, 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 April 25, 1957 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother is a native-born U.S. citizen, born on July 17, 1928 in Texas. The applicant's parents were married in Mexico in 1944. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The acting field office director found that the applicant had failed to establish that his mother had the required five years of physical presence in the United States after attaining the age of 14 years, and therefore concluded that he did not derive U.S. citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1957).<sup>1</sup>

On appeal, the applicant maintains that he has established his mother's physical presence as required by the statute. *See Applicant's Appeal Brief.*

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, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1957. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1957), is therefore applicable to this case.

Section 301(a)(7) of the former 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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<sup>1</sup> Section 301(a)(7) of the former 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.

Section 301(a)(7) of the former Act, thus requires that the applicant establish that his mother was physically present in the United States for at least 10 years prior to 1957, five of which after 1942 (when his mother turned 14 years old).

In support of his claim, the applicant submitted his mother's delayed birth certificate, her baptismal certificate, and sworn statements executed by family members and friends. The statement from the applicant's mother indicates that she was in the United States until the age of six and since the age of 18. The statement from the applicant's father indicates that the applicant's mother was in the United States for six years between 1946 and 1952. Other statements in the record indicate that the applicant's mother was present in the United States from 1946 to 1952. The record also contains a letter from a pastor of the Basilica of the National Shrine of the Little Flower in San Antonio, Texas, who states that the applicant's mother attended mass regularly between 1946 and 1952.

The AAO finds that the record establishes that the applicant's mother was physically present in the United States for five years after her fourteenth birthday in 1942 and before the applicant's birth in 1957. Nevertheless, the record does not demonstrate that the applicant's mother was physically present in the United States for a total of 10 years prior to 1957. The only documents in the record that attest to the applicant's mother's presence in the United States apart from the years between 1946 and 1952 are her brief statement and her birth and baptismal certificates. These documents are not sufficient to establish that she was present in the United States for 10 years prior to the applicant's birth in 1957.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 in this case has failed to meet his burden and his appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.