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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

E2.

[REDACTED]

FILE:

[REDACTED]

Office: EL PASO, TX

Date:

**MAY 05 2010**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

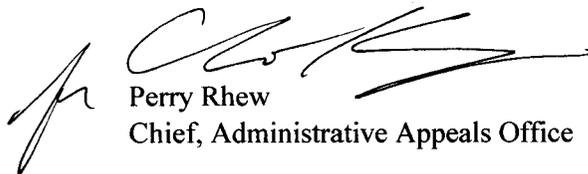
Application for Certificate of Citizenship under former Section 301(a)(7) of the  
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1976).

ON BEHALF OF APPLICANT:

[REDACTED]

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, El Paso, 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 5, 1976 in Mexico. The applicant's parents are [REDACTED]. The applicant's parents were married in New Mexico in 1956. The applicant's father was born in New Mexico in 1933. The applicant claims that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's claim upon finding that she had failed to provide sufficient evidence of her father's physical presence in the United States as required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1976).

On appeal, the applicant, through counsel, states that her father was physically present as required. *See* Appeal Brief. Counsel indicates that the applicant's older siblings have obtained certificates of citizenship. *Id.* Counsel further cites the applicant's father's social security earnings record as evidence of his physical presence in the United States prior to the applicant's birth. *Id.*

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 (9<sup>th</sup> Cir. 2001) (internal citations omitted). The applicant was born in 1976. Former section 301(a)(7) of the Act, is therefore applicable to this case.

Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1976), 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.

The applicant must thus establish that her father was physically present in the United States for 10 years prior to 1976, five of which after attaining the age of 14 (in 1947).

The record contains sufficient evidence to establish that the applicant's father was present in the United States for 10 years prior to 1977, five of which while after the age of 14 (in 1947). The record contains the applicant's father's social security earnings statement indicating that the applicant's father was employed in the United States for over 20 years prior to 1976. The record also shows that the applicant's parents were married in New Mexico in 1956. The applicant's father's school records

indicate that he was enrolled in school in the United States from 1942 to 1946. The record also contains a certificate indicating that the applicant's father had water service in his residence in Anthony, New Mexico since 1954. Although the record suggests that the applicant's older siblings were born in Mexico, the applicant's father's employment records reflect that the applicant's father was physically present in the United States during those years. The preponderance of the evidence establishes that the applicant's father was physically present in the United States at birth and for over 20 years thereafter and prior to the applicant's birth in 1976.

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 his burden of proof and the appeal will be sustained.

**ORDER:** The appeal is sustained.