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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
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Services

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FILE:

Office: DALLAS, TX

Date:

MAY 06 2010

IN RE:

APPLICATION:

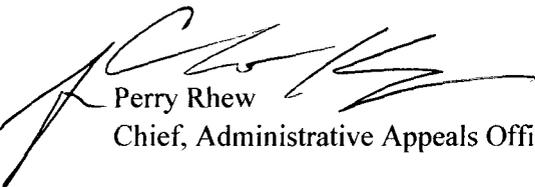
Application for Certificate of Citizenship under former Section 301(a)(7) of the
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1971).

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.

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 Field Office Director, Dallas, 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 September 5, 1971 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1969. The applicant's father was born in the United States on June 4, 1949. The applicant's mother is not a U.S. citizen. The applicant claims that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's claim upon finding that he had failed to provide sufficient evidence of his 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) (1971).

On appeal, the applicant, through counsel, maintains that he has provided sufficient evidence to establish his father's required physical presence in the United States. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO, and Appeal Brief. Counsel claims that the director erred in not properly considering the affidavits submitted in support of the applicant's claim. *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 (9th Cir. 2001) (internal citations omitted). The applicant was born on 1971. Former section 301(a)(7) of the Act is therefore applicable to this case.

Former section 301(a)(7) of the Act 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 his father was physically present in the United States for 10 years prior to 1971, five of which after attaining the age of 14 (in 1963).

The record does not establish that the applicant's father was present in the United States for 10 years prior to the applicant's birth in 1971. In this regard, the record includes the applicant's and his father's birth certificates, the applicant's father's baptismal and marriage certificates, the applicants' father's social security earnings statement (indicating employment income from 1966 to 1971), a copy of his

father's resident U.S. citizen identification card (issued in 1969), photographs¹ and written statements of the applicant's mother, grandmother and aunt.

On appeal, counsel maintains that there are no inconsistencies in the written statements submitted by the applicant and that corroborating documentary evidence is unavailable. The record shows that the applicant's father was engaged in seasonal work on farms and ranches at various times and locations in the United States until his death in 1976 and we recognize the difficulties inherent in obtaining relevant documentation given those circumstances. Nonetheless, the written statements of the applicant's mother, grandmother and aunt lack probative detail and do not establish that the applicant's father was physically present in the United States for 10 years prior to 1971.

The applicant's grandmother states that the applicant's father was present in the United States for several months each year from 1949 to 1956 and from 1966 to 1976. She does not provide further details or explain, for example, whether the applicant was present in the United States with the entire family each time. Although the applicant stated that his father had nine siblings born in Mexico from 1951 to 1971, he submitted testimony from only one of his aunts and did not explain or indicate that testimony from other relatives was unavailable. The applicant's aunt recalls living on a farm in Texas as a child and playing with her brother, the applicant's father. She indicates that the applicant's father was present in the United States during his early childhood and from 1966 until his death. The applicant's mother describes her courtship with the applicant's father beginning in "late 1968 [when] he was back in Mexico." She recounts their marriage in 1969 in Mexico, states that the applicant's father went back to the United States after their wedding and then returned to Mexico for a few weeks each year. The applicant's mother provides no information regarding the applicant's father's presence in the United States prior to 1968.

Although a preponderance of the evidence indicates that the applicant's father was physically present in the United States for five years after the age of 14, the testimony of the applicant's mother, grandmother and aunt fail to provide detailed, probative information sufficient to demonstrate that the applicant's father was physically present in the United States for 10 years prior to his birth in 1971.

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 the present case has failed to meet his burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The applicant submitted photocopies of six photographs of a man and one other, unidentified individual. The photocopies are referenced simply as "various photographs taken in the U.S." The photocopies are accompanied by no captions, dates, identifications of the pictured individuals and places, or explanations of their relevance. The photocopies consequently have no probative value.