

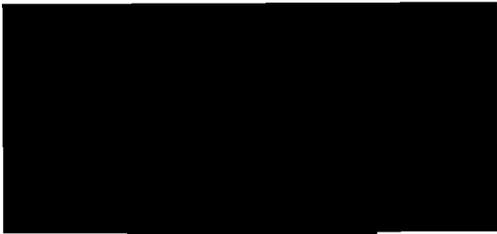
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



E₂

FILE: [REDACTED] Office: PHILADELPHIA, PA Date: **MAY 17 2010**

IN RE: [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)(1971).

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 Field Office Director, Philadelphia, Pennsylvania, 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 October 15, 1971 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1966. The applicant's father was born in Mexico in 1930, but acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant claims that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1971).

The field office director denied the applicant's claim upon finding that he had failed to provide evidence of his father's required physical presence in the United States. On appeal, the applicant seeks reconsideration of the director's decision stating that his incarceration prevents him from submitting evidence of his father's U.S. residence. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant further maintains that he should be allowed to "regain" U.S. citizenship by taking an Oath. *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, 8 U.S.C. § 1401(a)(7) (1971), is therefore applicable to this case.

Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1971), 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 1944).

The AAO finds that the record does not contain sufficient evidence to establish that the applicant's father was present in the United States for 10 years prior to the applicant's birth 1971. The AAO notes, as did the field office director, that the applicant's father indicated in his Form N-600, Application for a Certificate of Citizenship, that he had "always resided in Mexico." The applicant's father obtained his

certificate of citizenship in 1971. In view of this contemporaneous evidence, and the absence of any other evidence suggesting that the applicant's father was present in the United States prior to 1971, the AAO must find that the applicant cannot establish that his father was physically present in the United States prior to his birth as required by 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 in the present case has failed to meet his burden of proof and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.