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

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FILE: [REDACTED] Office: HARLINGEN, TEXAS

Date: **NOV 10 2010**

IN RE: [REDACTED]

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

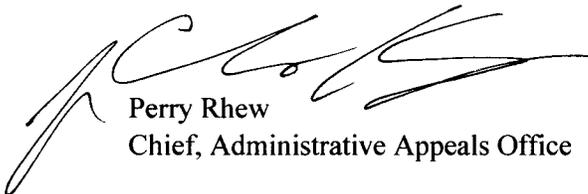
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The instant, second application for a Certificate of Citizenship was treated as a motion to reopen the first application, which was denied by the Field Office Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on October 2, 1974, to married parents [REDACTED]. The applicant's mother is a U.S. citizen based on her birth in the United States on February 22, 1945. The applicant's father was born in Mexico and was not a U.S. citizen at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1974), based on the claim that she acquired U.S. citizenship at birth through her mother.

The director found that the applicant failed to establish that her mother was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. The application was denied accordingly. On appeal, the applicant claims that the evidence is sufficient to show that her mother met the physical presence requirements.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1974. Accordingly, former section 301(a)(7) of the Act controls her claim to citizenship.<sup>1</sup>

Former section 301(a)(7) of the 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

The applicant must therefore establish that her mother was physically present in the United States for ten years before her birth on October 2, 1974, and that at least five of these years were after her mother's fourteenth birthday on February 22, 1959. *See id.*

Here, the preponderance of the evidence corroborates the applicant's claim that her mother satisfied the applicable physical presence requirements. Specifically, the record shows that the applicant's

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<sup>1</sup> Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

mother was born in Texas on February 22, 1945, and that she resided in the United States for a ten-year period until 1955. *See Delayed Texas Birth Certificate for [REDACTED]*, filed Nov. 28, 1979; *Baptism Certificate for [REDACTED]* dated Dec. 17, 1999 (showing that the applicant's mother was baptized in Harlingen, Texas on July 22, 1945); *Birth Certificate for [REDACTED]* (showing that the applicant's maternal uncle was born in the United States on September 2, 1948); *Baptism Certificate for [REDACTED]* (showing that the applicant's maternal uncle was baptized in San Benito, Texas on November 28, 1948); *Baptism Certificate for [REDACTED]* (showing that the applicant's maternal aunt was born in Texas on October 10, 1949, and baptized in Rio Hondo, Texas on June 4, 1951); *Marriage Certificate for [REDACTED]* dated Feb. 6, 1950 (showing that the applicant's maternal grandparents married in Texas in 1950); *Birth Certificate for [REDACTED]* (showing that the applicant's younger maternal uncle was born and baptized in Texas in 1952); *Elementary School Records for [REDACTED]* (showing that the applicant's mother attended school in the United States from 1951 to 1953); *Affidavit of [REDACTED]* dated Sep. 10, 2003 (stating that she resided in the United States from 1945 until she moved to Mexico with her family in 1955); *Affidavit of [REDACTED]*, dated Sep. 5, 2003 (stating that the applicant's mother's family returned to Mexico in 1955).

Further, the affidavits in the record support the applicant's claim that her mother returned to Texas in 1964, and that she remained in the United States performing domestic work for a family in Las Yescas until 1969. *See Affidavit of [REDACTED]* (stating that she performed domestic work for the [REDACTED] family from 1964 to 1969, and that during that period she only returned to Mexico for brief family visits and to give birth to two children); *Affidavit of [REDACTED]* (stating that the applicant's mother performed domestic work for her from 1964 to 1969); *Affidavit of [REDACTED]*, dated Oct. 7, 2004 (stating that the applicant's mother worked for her family at the [REDACTED] from 1964 to 1969); *Affidavit of [REDACTED]* dated Sep. 9, 2009 (statement by the applicant's father that his wife worked in the United States from February, 1964 until December, 1969). Accordingly, the evidence shows that the applicant's mother was physically present in the United States for at least five years after her fourteenth birthday in 1959.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has established by a preponderance of the evidence that her mother was physically present in the United States for a ten-year period before her birth in 1974, and that at least five of those years were after her mother's fourteenth birthday in 1959. Accordingly, the applicant is eligible for citizenship under former section 301(a)(7) of the Act.<sup>2</sup> The appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

**ORDER:** The appeal is sustained. The matter is returned to the Harlingen Field Office for issuance of a certificate of citizenship.

<sup>2</sup> U.S. Citizenship and Immigration Services (USCIS) records show that the applicant's three sisters were granted certificates of citizenship based on the same evidence presented in the instant case of their mother's birth and presence in the United States. *See [REDACTED]*