

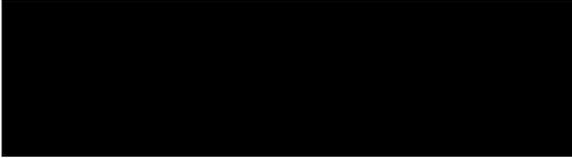
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: HARLINGEN, TX

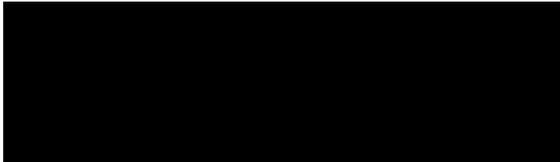
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NOV 16 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1956)

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, 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 March 30, 1956 in Mexico to [REDACTED] and [REDACTED]. The applicant's father was born on January 9, 1924 in Arizona. The applicant's parents were married in Mexico in 1953. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his father was physically present 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) (1956). Specifically, the director found that the applicant had failed to establish that his father was physically present in the United States after his fourteenth birthday. The application was accordingly denied.¹

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the applicant, through counsel, states that the director did not properly evaluate the evidence presented and maintains that his father had the required physical presence in the United States. See 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, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1956. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1956), therefore applies to the present case.²

Former section 301(a)(7) of the Act stated, in pertinent part, 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.

¹ The instant Form N-600, Application for Certificate of Citizenship, is the applicant's second. His first application was denied in 1980 for failure to establish his father's required physical presence in the United States. In accordance with the regulation at 8 C.F.R. § 341.6, the director considered the applicant's instant application as a motion to reopen the first application. The director granted the motion but denied the applicant's citizenship claim.

² 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.

The applicant must therefore establish that his father was physically present in the United States for 10 years prior to 1956, five of which after attaining the age of 14 (in 1938).

The record contains, in relevant part, a copy of the applicant's birth certificate, a copy of the applicant's father's birth, baptismal and marriage certificates, affidavits executed by the applicant's father, paternal aunt and uncle, and his father's co-worker. The record also includes the applicant's uncle's birth certificate and his aunt's baptismal certificate.

The relevant evidence establishes that the applicant's father was physically present in the United States from birth until 1930, about six years. The record, however, does not establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States for five years between his fourteenth birthday in 1938 and 1956 (the applicant's birth).

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The director noted a significant, unresolved discrepancy between the testimony of the applicant's father in 2008 and his previous testimony in 1980. In 2008, the applicant's father stated that he was in the United States from his birth in 1924 to 1931 and returned in 1946, but he testified in 1980 that he was in the United States until 1930 and returned after 1958. In the applicant's father's most recent affidavit, executed on April 22, 2010, he states that he was not present in the United States between 1931 and 1945, but returned to the United States at some point after 1945 for an unspecified period. Specifically, he states that he was in the United States for six months between 1952 and 1953 and that he returned to the United States at some point after his marriage in Mexico in 1953. The applicant's father explains that was an agricultural worker and that he crossed back and forth to Mexico every two weeks during the years prior to the applicant's birth, but he does not explain the discrepancy noted by the director with respect to his testimony in 1980. In light of this unresolved inconsistency in the record, the preponderance of the evidence does not establish that the applicant's father was physically present in the United States as claimed.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The burden in these proceedings is on the applicant to establish his father's physical presence in the United States by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.