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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

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FILE: [REDACTED] Office: SAN ANTONIO, TX Date: OCT 06 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 (1973).

ON BEHALF OF APPLICANT:

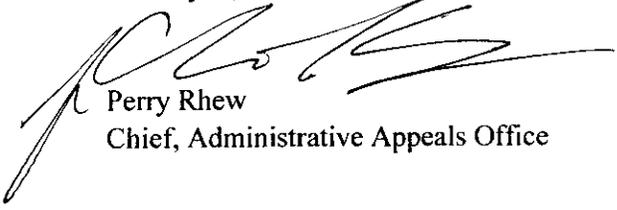
SELF-REPRESENTED

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, with a fee of \$585. 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, San Antonio, 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 July 17, 1973 in Mexico. The applicant's mother was born in Mexico on March 6, 1939, but acquired U.S. citizenship at birth through her U.S. citizen parent. The applicant's parents were married in Mexico in 1956. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1401(a)(7), claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim finding that the applicant had failed to demonstrate that his mother had the required period of physical presence in the United States to transmit U.S. citizenship to the applicant. The application was accordingly denied.

On appeal, the applicant maintains, in relevant part, that his mother could not satisfy the physical presence requirement in former section 301(a)(7) of the Act because she did not know that she was a U.S. citizen prior to her obtaining proof of citizenship in 1975. *See Applicant's Appeal Statement.* The applicant admits that his mother would visit the United States for two weeks at a time "at most." *Id.* Nevertheless, the applicant claims that he acquired U.S. citizenship at birth through his mother. *Id.*

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. 2000) (internal citation omitted). The applicant in the present matter was born in 1973. Former section 301(a)(7) of the Act therefore applies to the present case.¹

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 Former section 301(a)(7) of the 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 the section, however, remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The applicant must thus establish that his mother was physically present in the United States for ten years prior to 1973, five of which while she was over the age of 14 (after 1953).

The record contains, in relevant part, a copy of the applicant's birth certificate, his mother's birth certificate and marriage certificate. The evidence in the record fails to establish that the applicant's mother was physically present in the United States for 10 years prior to 1973, five of which while over the age of 14 (after 1953). The applicant's mother's birth certificate indicates that she was born in Mexico. The applicant's parent's marriage certificate indicates that they were married in Mexico in 1956. In a sworn statement dated May 25, 2010 and taken in connection with the instant case, the applicant's mother stated that she had never visited the United States as a child, did not work in the United States before the applicant was born and did not have at least 10 years of physical presence in the United States before his birth. The applicant's mother explained that she came to the United States to visit her brother, but would stay "at the most two weeks at a time" and that she never worked in the United States before she obtained her certificate of citizenship in 1975. Both the applicant and his mother acknowledge that she did not begin residing in the United States until after obtaining her certificate of citizenship in 1975 after the applicant was born. The record contains no evidence that her short visits to the United States prior to the applicant's birth totaled at least 10 years. The applicant therefore has not established that he acquired U.S. citizenship at birth through his mother under former section 301(a)(7) of the Act.

The applicant bears the burden in these proceedings to establish his eligibility for citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has not met his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.