



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: SAN DIEGO, CA Date:

SEP 10 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 (1977)

ON BEHALF OF APPLICANT:

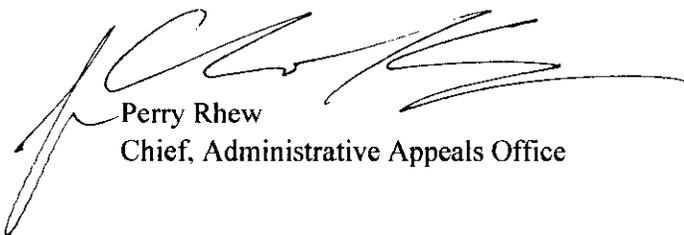
[REDACTED]

**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.

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 Diego, California, 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 19, 1977 in Mexico. The applicant's parents, according to his birth certificate, are [REDACTED]. The applicant claims that his mother acquired U.S. citizenship at birth through her mother (the applicant's grandmother), who was born in California on September 7, 1927. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant had failed to establish that his mother was a U.S. citizen. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that his mother acquired U.S. citizenship at birth through her mother, the applicant's grandmother. *See* Appeal Brief. Counsel states that the applicant's grandmother resided in the United States as required to transmit U.S. citizenship and explains that documentary evidence is unavailable because the applicant's mother and grandparents were migrant agricultural workers who did not attend school or have employment records. *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 (9<sup>th</sup> Cir. 2001) (citations omitted). The applicant was born in 1977. Section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 (1977), is therefore applicable to this case.<sup>1</sup>

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

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<sup>1</sup> 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.

States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

At the outset, the applicant must establish that his mother was a U.S. citizen at the time of his birth. The record does not contain any evidence of the applicant's mother's U.S. citizenship. The AAO further notes that the applicant's mother's application for certificate of citizenship was denied, and her appeal therefrom was dismissed.

In its August 18, 2010 decision dismissing the applicant's mother's appeal of the denial of her application for certificate of citizenship, the AAO found that the applicant's mother did not establish that her mother (the applicant's grandmother) resided in the United States as required by section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601 (1948).<sup>2</sup> The AAO found that the record did not establish that the applicant's grandmother resided in the United States for five years between her sixteenth birthday (on September 7, 1943) and the applicant's mother's birthday (on November 16, 1948). Therefore, the applicant's mother did not establish that she acquired U.S. citizenship at birth through her mother pursuant to section 201 (g) of the Nationality Act. The applicant's record does not contain any additional information or evidence with respect to his grandmother's residence in the United States or his mother's claim to U.S. citizenship.

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

**ORDER:** The appeal is dismissed.

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<sup>2</sup> Section 201(g) of the Nationality Act stated, in pertinent part, that the following shall be nationals and citizens of the United States:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien . . .