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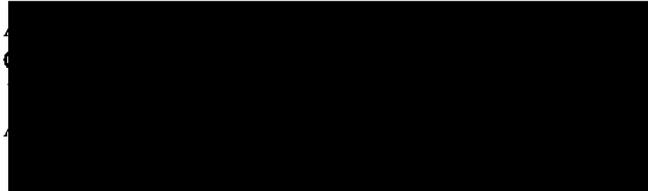
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: DENVER, COLORADO Date: SEP 23 2010

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on January 3, 1994, to married parents Apolinar Miranda and Maria Quintero Ayala. The applicant's father is a U.S. citizen based on his birth in the United States. The applicant's mother was born in Mexico and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his father.

The director found that the applicant failed to establish that his father was physically present in the United States for five years prior to the applicant's birth, as required by section 301(g) of the Act. *See Decision of the Director*, dated May 29, 2009. The director denied the application accordingly. *Id.* On appeal, the applicant's father submitted additional evidence purporting to show that he satisfied the physical presence requirement. *See Form I-290B, Notice of Appeal*, filed June 16, 2009; *Letter from* [REDACTED] dated June 8, 2009.

On July 20, 2010, the AAO issued a notice to the applicant informing him of derogatory evidence in the record, and of the AAO's intent to dismiss the appeal. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), the applicant was afforded thirty (30) days to respond to the notice. The applicant failed to respond, and the AAO will render a decision based on the evidence of record.

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 1994. Accordingly, section 301(g) of the Act controls his claim to citizenship.

Section 301(g) of the Act states, 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 . . . 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 five years, at least two of which were after attaining the age of fourteen years. . .

The applicant must therefore establish that his father was physically present in the United States for five years before his birth on January 3, 1994, and that at least two of these years were after his father's fourteenth birthday on June 6, 1983. *See id.*

The record contains the following evidence relating to the applicant's father's physical presence in the United States: a birth certificate indicating that [REDACTED] on June 6, 1969; a letter from [REDACTED], dated May 4, 2009, stating that [REDACTED] was employed by the company from February 12, 1987 to May 20,

1990; and portions of a Social Security Statement, dated March 28, 2008, showing earnings for Apolinar Miranda from 1995 to 2008.

On appeal, the applicant's father submitted a letter on Denver Health letterhead stationary, dated June 8, 2009. *See Letter from [REDACTED] dated June 8, 2009.* This letter is signed by [REDACTED] who claims to be a Manager of the Denver Health Volunteer Services Department & Patient Information. *Id.* In this letter, [REDACTED] states that [REDACTED] Senior "completed the voluntary work required for his community service . . . from January 05, 1984 to January 15, 1989." *Id.* However, on June 25, 2009, the director of the Denver Health Volunteer Services and Patient Information department informed U.S. Citizenship and Immigration Services (USCIS) that Denver Health has no information regarding [REDACTED] a being a volunteer at the Denver Health and Hospital Authority; they do not have a manager named [REDACTED] and that the June 8, 2009 letter was not generated by her department. *See Letter from [REDACTED] Volunteer Services and Patient Information, dated June 25, 2009.* On June 30, 2009, USCIS issued an appointment notice for the applicant to appear on July 13, 2009, with his father, and with certified court documents regarding the applicant's father's required community service. The applicant did not attend the scheduled appointment.

Here, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for five years before the applicant's birth in 1994. First, the letter from [REDACTED] indicates that [REDACTED] was present in the United States from 1987 to 1990, a period of only three years. Second, the portions of the Social Security Statement in the record only show earnings for [REDACTED] from 1995 to 2008, after the applicant's birth in 1994. Third, the letter from [REDACTED] appears to be fraudulent, and is not entitled to any weight in these proceedings. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (holding that the burden lies on the petitioner to resolve any inconsistencies in the record).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for five years before the applicant's birth in 1994. Accordingly, the applicant is not eligible for citizenship under section 301(g) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.