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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: NEW ORLEANS, LA

Date: SEP 23 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1957).

ON BEHALF OF APPLICANT:

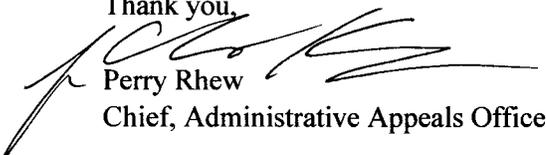
SELF-REPRESENTED

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 Acting Field Office Director, New Orleans, Louisiana, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on March 25, 2010. The applicant filed a motion to reopen or reconsider. The applicant's motion will be granted and the prior decision of the AAO will be affirmed.

The record reflects that the applicant was born on [REDACTED] in Mexico. The applicant's parents are [REDACTED]. The applicant's mother is a native-born U.S. citizen, born on [REDACTED] in Texas. The applicant's parents were married in Mexico in 1944. The applicant sought a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1957).¹

The Acting Field Office Director denied the application. In dismissing the applicant's appeal, the AAO found that the record did not demonstrate that the applicant's mother was physically present in the United States for a total of 10 years prior to the applicant's birth (in 1957) as is required by former section 301(a)(7) of the Act.²

The applicant seeks reopening or reconsideration of the AAO's decision maintaining that his mother was physically present in the United States for 10 years prior to his birth. The applicant resubmits his mother's delayed birth certificate, her baptismal certificate, and sworn statements executed by family members and friends. The applicant also submits his maternal aunt's birth and baptismal certificates, indicating that she was born in Texas in November 1929. The applicant's mother was born in July 1928. The statement from the applicant's mother indicates that she was in the United States until the age of six and since the age of 18. The statement from the applicant's aunt indicates that his mother was in the United States until the age of five.

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.

² Former Section 301(a)(7) of the Act requires that the applicant establish that his mother was physically present in the United States for at least 10 years prior to 1957 (the applicant's date of birth), five of which after 1942 (when his mother turned 14 years old).

The only documents in the record that attest to the applicant's mother's presence in the United States apart from the years between 1946 and 1952 are her birth and baptismal certificates, her brief statement that she was in the United States until the age of six, the applicant's aunt's birth and baptismal certificates, and her statement that the applicant's mother was in the United States until the age of five. The statements by the applicant's mother and aunt are inconsistent and lack detailed and probative information. The evidence in the record therefore does not establish that the applicant's mother was present in the United States for 10 years prior to the applicant's birth in 1957.

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. Accordingly, the prior decision of the AAO will be affirmed and the application will remain denied.

ORDER: The March 25, 2010 decision of the Administrative Appeals Office is affirmed. The application remains denied..