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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED] Office: DALLAS, TX Date: **APR 01 2011**

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 (1971).

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on September 18, [REDACTED] in [REDACTED]. The applicant's parents are [REDACTED]. They were married in [REDACTED] on July 31, [REDACTED]. The applicant's father was born in [REDACTED] on November 16, [REDACTED]. 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 had the required physical presence in the United States to transmit U.S. citizenship under former section 301 of the Act, 8 U.S.C. § 1401 (1971).¹

On appeal, the applicant maintains that his father was physically present in the United States as required. *See Appeal Brief and Statement of the Applicant on Form I-290B, Notice of Appeal or Motion.*

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 1971. Former section 301(a)(7) of the Act, as in effect in 1971, therefore applies to the present case.

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.

The applicant must therefore establish that his father was physically present in the United States for 10 years prior to his birth in [REDACTED], five of which were after his fourteenth birthday (after [REDACTED]). The record contains, in relevant part, the applicant's father's birth certificate, the applicant's birth certificate, the applicant's parents' marriage certificate, and affidavits executed by the applicant's father, aunt and the applicant's father's cousin. The record also contains the results of a polygraph test administered to the applicant's father. The affidavits submitted are detailed and consistent. They indicate that the applicant's father was physically present in the United States from birth until age six, and then since [REDACTED]. Counsel explains that employment

¹ 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.

or social security records are unavailable in light of the nature of the applicant's employment during the relevant period.

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 applicant's claim has reasonable support and, although the affidavits submitted were executed by his family members, they are detailed and consistent. The evidence in the record establishes that the applicant's father was physically present in the United States for 10 years prior to ████████ five of which were after the age of 14.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has met his burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained.