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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
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: [Redacted] Date: **APR 07 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 (1964).

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, [REDACTED] 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 December 25, 1964 in [REDACTED]. The applicant's parents are [REDACTED]. They were married in [REDACTED] on February 22, 1954. The applicant's father was born in [REDACTED] on November 3, 1928. 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 (1964).<sup>1</sup>

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1964. Former section 301(a)(7) of the Act, as in effect in 1964, 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 1964, five of which were after 1942 (the applicant's father's fourteenth birthday). The record contains, in relevant part, the applicant's father's birth and baptismal certificates, the applicant's birth certificate, the applicant's parents' marriage certificate, affidavits executed by the applicant's father and other family members, a copy of the baptismal certificate of the son of the applicant's father's former employer, and social security earnings information. The affidavits submitted by the applicant's father indicate that he was

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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.

present in the United States from birth until 1939, and then from 1946 to 1953, and from 1955 to 1956. The applicant's aunt states in her affidavit that her older brother, the applicant's father, was present in the United States starting in 1953. The [REDACTED] sisters, whose affidavit relates to the baptismal certificate of the son of the applicant's father's former employer, state that the applicant's father was in the United States in 1951. The social security earnings information relates to the year 1954, and from 1966 to the present.

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. An inconsistency noted by the field office director was explained in the applicant's brief. The lack of employment records or social security information is also explained by the nature of the applicant's father's employment as a migrant farm worker. The evidence in the record establishes that the applicant's father was physically present in the United States for 10 years prior to 1964, 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.