

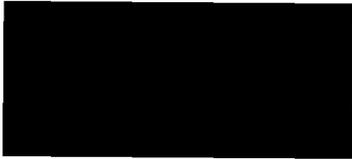
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



E2

Date: **AUG 17 2011**

Office: SAN DIEGO, CA

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1963).

ON BEHALF OF APPLICANT:



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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Diego, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 21, 1963 in Mexico. The applicant's parents are [REDACTED]. The applicant's father was born in Mexico on February 13, 1944, but acquired U.S. citizenship at birth through his mother, the applicant's grandmother. The applicant's parents were married in Mexico on March 15, 1963. 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 his eligibility under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1963), because he could not demonstrate that his father was physically present in the United States for the statutorily required period of time.

On appeal, the applicant, through counsel, maintains that his father was physically present in the United States as required. *See Appeal Brief*. The appeal is accompanied by additional affidavits and documentary evidence relating to his father's presence in the United States.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 1963. Former section 301(a)(7) of the Act therefore applies to the present case.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.

¹Section 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.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that his father was physically present in the United States for 10 years prior to 1963, five of which were after the age of 14 (after 1958).

The applicant has submitted his father's certificate of citizenship issued in 1957; evidence of his Little League participation in 1953, 1954 and 1955; evidence of his first communion in 1956; social security earnings statement listing earnings in 1961 to 1965; a copy of his selective service card; his paternal grandmother's social security earnings statement listing earnings for all but two years between 1952 to 1962; copies of photographs of the applicant's father boxing dated in 1958, 1959 and 1960; and affidavits executed by his father, friends and other relatives. The evidence submitted establishes that the applicant's father was physically present in the United States for the required period of time. The affidavits provided are detailed and persuasive, and the documentary evidence in the record corroborates the applicant's claims. The AAO thus finds that the applicant has established that his father was physically present in the United States for 10 years prior to 1963, five of which were after 1958 and therefore acquired U.S. citizenship at birth under former section 301(a)(7) of the Act.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has met this burden. Accordingly, the appeal will be sustained. The matter will be returned to the San Diego District Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the San Diego District Office for issuance of a certificate of citizenship.