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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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Date: DEC 09 2011

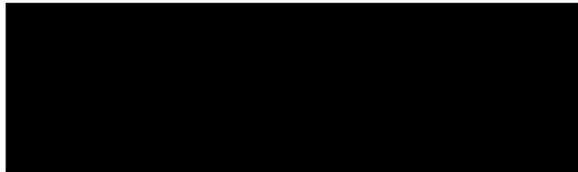
Office: NEW ORLEANS, LA

FILE: 

IN RE: 

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)

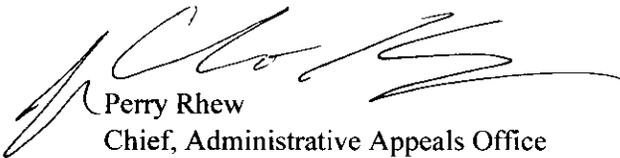
ON BEHALF OF APPLICANT:



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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Interim District Director, New Orleans, Louisiana, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on February 26, 1967 in [REDACTED]. The applicant's parents were married at the time of his birth. The applicant's father was born in [REDACTED] in 1945.¹ The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The interim district director denied the applicant's citizenship claim upon finding that he was not under the age of eighteen years as is required by section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

On appeal, the applicant, through counsel, states that he is eligible for citizenship under section 341 of the Act because his father had retained and passed on his U.S. citizenship to the applicant through the doctrine of double constructive retention.²

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 1967. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.³

Former section 301(a)(7) of the Act stated 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of

¹ Counsel contends that the applicant's father was a U.S. citizen through his father who was born in the United States in 1917.

² The applicant's father has no physical presence in the United States and the doctrine of constructive retention and physical presence would not apply in the instant case since the record reflects that the applicant's father was never aware of his U.S. citizenship and could not, therefore, avail himself of the doctrine by entering the United States.

³ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

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 thus establish that he has fulfilled the requirements of former section 301(a)(7) of the Act. As the director erroneously considered the applicant's eligibility for U.S. citizenship under current section 322 of the Act, his decision must be withdrawn and the matter remanded for entry of a new decision.⁴ Upon remand, the director must provide the applicant an opportunity to submit evidence that he fulfilled the requirements of former section 301(a)(7) of the Act before entering a new decision into the record. If the applicant is found ineligible for citizenship under former section 301(a)(7) of the Act, the director shall certify his decision to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

⁴ Section 322 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), does not apply to this case because the applicant was over the age of eighteen years as of February 27, 2001, the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).