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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
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Date: DEC 19 2011

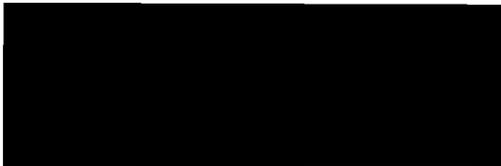
Office: LOS ANGELES, CA

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) (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.

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 \$630. 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 Field Office Director, Los Angeles, California, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Chihuahua, Mexico on November 26, 1963. The applicant's parents were married at the time of his birth. The applicant's father was born in the United States in 1931.¹ The applicant's mother was not a U.S. citizen.² The applicant was admitted to the United States as a lawful permanent resident on October 26, 1971. On December 1, 1997, the applicant was placed into immigration proceedings pursuant to section 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(B)(i) for being convicted of a crime involving a controlled substance. On December 15, 1997, the immigration judge ordered the applicant removed *in absentia*, thereby terminating his lawful permanent resident status. On December 16, 1997, the applicant was removed from the United States and was returned to Mexico. On October 23, 2001, the prior removal order was reinstated and the applicant was removed from the United States and was returned to Mexico. On October 22, 2007, the applicant was again placed into removal proceedings. On March 24, 2008, the immigration judge terminated proceedings.

The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1963).

The field office director determined that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that his father met the physical presence requirements under former section 301(a)(7) of the Act. *See Decision of the Field Office Director*, dated June 21, 2010. The application was denied accordingly. On appeal, counsel contends that the field office director failed to consider the applicant's mother's and uncle's affidavits in determining the applicant's father's physical presence in the United States. *See Counsel's Brief*, dated August 18, 2010. Counsel requested an additional 60 days in order to submit additional contemporaneous documentation to support a finding in favor of the applicant. To date, over a year later, the record does not contain the additional evidence that counsel indicated would be submitted to the AAO. Accordingly, the record is complete.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1963. 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:

¹ The applicant's father passed away on March 9, 2003.

² The applicant's mother passed away on September 20, 2008.

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.

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 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.

Accordingly, the applicant must establish that his father is a U.S. citizen who was physically present in the United States for a period or periods of at least ten years, at least five of which were after October 17, 1945, the date on which the applicant's father turned 14 years of age, and before the applicant's birth on November 26, 1963. The applicant contends that his father, [REDACTED] was born in the United States and resided in the United States from his birth in 1931 until January 1, 1937 and from January 1, 1946 until January 1, 1960. *See Form N-600, Application for Certificate of Citizenship.*

In support of these contentions, the applicant presented a Mexican Birth Certificate indicating that he was born to [REDACTED] on November 26, 1963 in Naica, Saucillo, Chihuahua, Mexico. *See Birth Certificate for [REDACTED]* registered January 13, 1964, in Naica, Saucillo, Chihuahua, Mexico. The applicant presented an El Paso, Texas Birth Certificate indicating that [REDACTED] birth in Clint, Texas on October 17, 1931 was not registered until April 8, 1947. *See Certificate of Birth*, issued April 8, 1947. The applicant presented a Certificate of Baptism reflecting that the applicant's father was baptized in Clint, Texas on November 29, 1931 and was born in Clint, Texas on October 17, 1931. *See Certificate of Baptism*, issued November 29, 1931. The applicant also presents a Selective Service System Notification of Classification Card for [REDACTED] issued on October 21, 1957. *See Selective Service System Notification of Classification Card.*

The record also contains a declaration from the applicant's mother, and a declaration from the applicant's uncle, [REDACTED]. On January 28, 2008, the applicant's mother executed a declaration indicating that she met [REDACTED] during one of his visits to his parents in Saucillo, Chihuahua, noting that [REDACTED] was residing in the United States. She indicates that after their marriage, [REDACTED] returned to the United States to work and would visit her and the children in Mexico several times per year until the family was able to travel to the United States in 1970. On January 31, 2008, the applicant's uncle executed a declaration stating that both he and [REDACTED] were born in the United States and resided there from birth until approximately 1937. He states that both he and [REDACTED] travelled back and forth between Mexico and the United States from 1937 until 1946. He further states that [REDACTED] worked in a cotton factory and doing field work in Clint, Texas from 1946 through 1949, at which time he and [REDACTED] both returned to Mexico. He states that while he remained in Mexico, [REDACTED] returned to the United States to work in Texas doing field work and would visit the family in Saucillo, Mexico often, staying for a couple of months out of the year. He also states that [REDACTED] met his wife in Mexico during one of his visits and would send money and visit the family several times per year until the family moved to the United States in 1970.

Here, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for at least ten years before the applicant's birth in 1963, five of which were attained after October 17, 1945. The Baptismal Certificate and Selective Service Card only provide evidence that [REDACTED] was present in the United States in 1931 and 1957. Although the applicant's mother and his uncle testified that [REDACTED] was present in the United States, their declarations lack detail and are not supported by other documentation that [REDACTED] lived in Texas from 1931 until 1937 and from 1946 until his death. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for the requisite period. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.