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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

PUBLIC COPY

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[REDACTED]

Date: DEC 28 2011

Office: EL PASO, TX

FILE: [REDACTED]

IN RE:

[REDACTED]

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) (1957)

ON BEHALF OF APPLICANT:

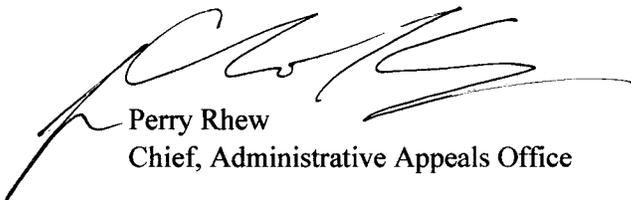
[REDACTED]

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.

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 Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in [REDACTED] Mexico, on [REDACTED]. The applicant's parents were married at the time of the applicant's birth. The applicant's mother is a U.S. citizen by birth in San Vicente, Texas on [REDACTED]. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1957), based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director determined that that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that his mother met the physical presence requirements under former section 301(a)(7) of the Act. *See Decision of the Field Office Director*, dated July 28, 2010. The application was denied accordingly. On appeal, counsel contends that the field office director erred in finding that the applicant had failed to establish that his mother met the physical presence requirements. *See Form I-290B and Counsel's Brief*.

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 1957. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.<sup>1</sup>

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 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 mother 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 May 1, 1940, the date on which the applicant's mother turned 14 years of age, and before the applicant's birth on [REDACTED]. The applicant contends that his mother, [REDACTED], was born in the United States and resided in the United States from her birth in [REDACTED] until June 1940; from January 1941 until December 1941; from March 1943 until October 1943; from April 1944

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<sup>1</sup> 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.

until November 1944; from April 1945 until November 1946; from February 1947 until June 1947; from October 1947 until January 1948; from March 1948 until October 1949; from January 1950 until April 1950; from January 1951 until September 1952; from April 1953 until April 1954; and from June 1956 until March 1957. *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 [REDACTED] in Los Alamitos Ojinaga, Chihuahua, Mexico. *See Birth Certificate for [REDACTED]*. The applicant presented a Texas Delayed Certificate of Birth indicating that [REDACTED] birth in San Vicente, Texas on [REDACTED] was registered on October 20, 1992. *See Delayed Certificate of Birth, issued September 10, 2009.* The applicant presented a Certificate of Baptism indicating that [REDACTED] in San Vicente, Texas, was baptized in Alpine, Texas on July 1, 1926. *See Certificate of Baptism, issued on November 1, 2002.*

The applicant presented an affidavit from his mother in which she states that she was physically present in the United States from May 1, 1926 until June 1940; from January 1941 until December 1941; from March 1943 until October 1943; from April 1944 until November 1944; from April 1945 until November 1946; from February 1947 until June 1947; from October 1947 until January 1948; from March 1948 until October 1949; from January 1950 until April 1950; from January 1951 until September 1952; from April 1953 until April 1954; and from June 1956 until March 1957. She states that she resided in San Vicente, Texas until she was 14 years old. She states that from 1943 until 1957 she worked daily planting and harvesting beans, onions, cantaloupe, cotton and other crops for a man named [REDACTED] in and around the area in the United States close to Ojinaga, Chihuahua, Mexico. She states that she also cleaned houses for people in the United States, such as in Presidio, Texas, after she finished her daily work in the fields. She states that she was paid 5 cents per day plus room and board. She states that one such woman for whom she worked was named [REDACTED]. She states that she never attended school in the United States or Mexico.

The applicant's mother, during an interview regarding the applicant's Form N-600 on March 25, 2010, gave sworn testimony stating that she remembered signing a piece of paper, but did not remember specifically signing the affidavit submitted by the applicant. She stated that her parents did not want to remain in the United States and she moved to Mexico at the age of 3. She stated that she did not return to the United States until her youngest child was 9 years old (approximately in [REDACTED]). She stated that she did not remember being in the United States on any other occasions because her husband did not want to come to the United States. She stated that she has a bad memory. She stated that she did work in agriculture in the United States after her youngest child was born (approximately in [REDACTED]) and only came to the United States after she was a widow.

The applicant's mother's written statement and oral testimony are inconsistent, lack detail and are not supported by contemporaneous documentation. While statements submitted in regard to the applicant's mother's employment in the United States indicate that she worked for and resided with a specific family for 23 years, even sharing a room with the family's daughter, the applicant's mother failed to recall this family's name in her written testimony and explicitly denied any presence in the United States during the period in question when providing oral testimony.

The applicant presented a sworn statement from [REDACTED] dated June 5, 2010, in which she states that she was born on [REDACTED] in Mexico and has been a lawful permanent resident of the United States since 1979. She states that she first met [REDACTED] in June 1943 when [REDACTED] was pregnant with twins. She states that her parents, [REDACTED] employed [REDACTED] as a live-in housekeeper in Presidio, Texas. She states that [REDACTED] received a room, food, clothing and a little money as payment and that she always shared her bedroom with [REDACTED]. She states that the applicant's mother worked for her parents for a period of 23 years and that she quit in 1966. The witness' statement is inconsistent with the applicant's mother's oral testimony and lacks probative detail.

The applicant presented a sworn statement from [REDACTED] dated June 5, 2010, in which she states that she was born on [REDACTED] in Mexico and has been a lawful permanent resident of the United States since 2001. She states that she is the applicant's sibling and that their mother worked as a live-in housekeeper for [REDACTED] and her husband in Presidio, Texas while she and her siblings resided with their father in Ojinaga, Chihuahua, Mexico. She states that her mother worked for this family all of her life until September 1966 when she was 16 years old. She states that she has known [REDACTED] all of her life and now cares for [REDACTED]. The witness' statement is inconsistent with the applicant's mother's oral testimony, lacks probative detail and indicates that the witness lacks first-hand knowledge of the pertinent events, which occurred prior to her birth or during her young childhood.

The applicant presented a sworn statement from [REDACTED], dated June 2, 2010, in which he states that, when he was a teenager, his father, [REDACTED] informed him that he had participated in [REDACTED] baptism in Alpine, Texas. He states that his father informed him that [REDACTED] was born in San Vicente, Texas and lived there until she was twelve years old. He states that shortly thereafter his father lost contact with [REDACTED] and his father is now deceased. The witness' statement is inconsistent with prior testimony by the applicant's mother (her written statement indicates she resided in Texas until age 14 and her oral testimony indicates that she resided in Texas until the age of 3). [REDACTED] statements also lack probative detail and indicate that he lacks first-hand knowledge of the pertinent events.

Here, the evidence in the record is insufficient to show that the applicant's mother was physically present in the United States for at least ten years before the applicant's birth in [REDACTED], five of which were attained after May 1, 1940. The Baptismal Certificate and Delayed Birth Certificate only provide evidence that [REDACTED] was present in the United States in 1926. While counsel contends that the applicant's mother's testimony was inconsistent because she is old and was tired, on appeal, counsel fails to provide additional evidence or any contemporaneous documentation to support a finding that the applicant's mother resided in the United States for the required period. Although a family member and two other individuals stated that [REDACTED] was present in the United States, their declarations are inconsistent with the applicant's mother's written and/or oral testimony, lack probative detail, indicate that they do not have first-hand knowledge of the relevant events and are not supported by other documentation that [REDACTED] lived in the United States during the period in question. *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 mother 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.