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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

E-2

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date: FEB 04 2011

IN RE:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1967)

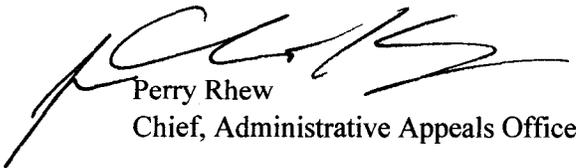
ON BEHALF OF PETITIONER:

[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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on April 4, 1967, to married parents [REDACTED]. The applicant's father is a U.S. citizen based on his birth in the United States. The applicant's mother was born in Mexico and 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) (1967), based on the claim that he acquired U.S. citizenship at birth through his father.

The director found that the applicant failed to establish that his father was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. See *Decision of the Director*, dated Apr. 28, 2010. The application was denied accordingly. *Id.* On appeal, the applicant claims through counsel that the evidence is sufficient to show that his father meets the physical presence requirements. See *Form I-290B, Notice of Appeal*, filed May 26, 2010; *Brief in Support of Appeal*, dated June 22, 2010.

The AAO conducts appellate review on a de novo basis. 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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1967. Accordingly, former section 301(a)(7) of the Act controls his claim to citizenship.¹

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. . .

The applicant must therefore establish that his father was physically present in the United States for no less than ten years before his birth on April 4, 1967, and that at least five of these years were after his father's fourteenth birthday on January 6, 1937. See *id.*

Here, the preponderance of the evidence corroborates the applicant's claim that his father was born in the United States, and that he met the physical presence requirements set forth in former section

¹ 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.

301(a)(7) of the Act. Specifically, the record contains the following evidence regarding [REDACTED]'s physical presence in the United States before the applicant's birth: a delayed birth certificate, filed on June 5, 1963, showing that [REDACTED] was born in [REDACTED]; federal census records showing that the applicant's father resided in [REDACTED] with his family in 1930; a statement of attendance from the [REDACTED] District, indicating that the applicant's father attended school and resided in [REDACTED] in 1930 and 1931; a selective service registration certificate showing that [REDACTED] was registered in [REDACTED] on May 11, 1964; an Identification Card for the Use of Resident Citizen in the United States [REDACTED], issued by the former Immigration and Naturalization Service in Los Angeles on December 28, 1964; and a social security statement showing earnings for [REDACTED] for the years 1964 to 1990.

Additionally, the record contains a declaration from the applicant's father indicating that he resided in the United States from his birth in 1923 until he was "repatriated from the United States to Mexico" with his family in 1931. *Declaration of [REDACTED]* dated Nov. 6, 2009. A declaration from the applicant's paternal uncle corroborates the applicant's claim that his father resided in [REDACTED] from his birth until 1931. *See Declaration of [REDACTED]*, dated Feb. 3, 2010. When the applicant's father was 17 years old, he participated in the [REDACTED] as a guest worker for six months in [REDACTED]. When [REDACTED] was 19 years old, he spent another eight months working in [REDACTED] and [REDACTED]. *Id.* [REDACTED] states that he reestablished his residence in the United States in or around 1959. *Id.* [REDACTED] worked in the United States, and visited his family regularly in [REDACTED]. *Id.* The applicant's mother corroborates [REDACTED] claim that he began to live and work in the United States in or around 1959, while she and the children remained in [REDACTED]. *See Declaration of [REDACTED]* dated Nov. 6, 2009.

On May 20, 2010, an Immigration Judge terminated the applicant's removal proceedings based on a finding that the applicant acquired citizenship at birth through his father.² *See Order of the Immigration Judge*, dated May 20, 2010.

Although the immigration judge's finding regarding the applicant's citizenship is not binding on these proceedings, the identification documents, school records, census records, social security records and sufficiently detailed declarations in the record support the applicant's claim that his father was physically present in the United States for no less than ten years before his birth on [REDACTED], and

² An immigration judge may credit an individual's citizenship claim in the course of terminating removal proceedings for lack of jurisdiction because the government has not established the individual's alienage by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a), (c) (prescribing that the government bears the burden of proof to establish alienage and removability or deportability by clear and convincing evidence). The immigration judge's decision regarding citizenship, however, is not binding on USCIS. USCIS retains sole jurisdiction to issue a certificate of citizenship and the agency's decision is reviewable only by the federal courts, not EOIR. Sections 341(a) and 360 of the Act, 8 U.S.C. §§ 1452(a), 1503; 8 C.F.R. 341.1. *See also Minasyan v. Gonzalez*, 401 F.3d at 1074 n.7 (noting that the immigration court had no jurisdiction to review the agency's denial of Minasyan's citizenship claim).

that at least five of these years were after his father's fourteenth birthday on [REDACTED] Section 301(a)(7) of the Act.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has established by a preponderance of the evidence that his father was physically present in the United States for the requisite period, and that he is eligible for citizenship under former section 301(a)(7) of the Act. Accordingly, the appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Los Angeles Field Office for issuance of a certificate of citizenship.