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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: DALLAS, TX

Date:

JAN 05 2011

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1972).

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 application was denied by the Field Office Director, Dallas, 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 on December 13, 1972 in Mexico. His parents are [REDACTED]. The applicant's mother was born on May 16, 1948 in Texas. The applicant's parents were married in Texas in 1966. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his mother was physically present in the United States for the period of time required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the applicant, through counsel, submits a revised affidavit executed by his mother as well as her social security earnings statement and an affidavit executed by the applicant's father. The Form I-290B, Notice of Appeal to the AAO, includes a note stating "see Brief attached for further and specific argument." The AAO notes that there was no brief attached to the Form I-290B, nor has one been received by this office under separate cover.

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 1972. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1965), 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.

¹ Section 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.

The applicant must therefore establish that his mother was physically present in the United States for 10 years prior to 1972, five of which were after attaining the age of 14 (in 1962).

The record contains, in relevant part, a copy of the applicant's birth certificate, a copy of the applicant's mother's birth certificate, copies of the applicant's siblings' Mexican birth certificates, a copy of the applicant's parents' marriage certificate and affidavits executed by the applicant's mother, father and grandmother. The record also contains a copy of the applicant's mother's Mexican school records and her U.S. social security earnings statement listing, in relevant part, \$72 worth of income in 1971.

The record does not establish that the applicant's mother was physically present in the United States for 10 years prior to 1972, five of which were after 1962. The applicant's mother was born in Texas in 1948 and returned to Mexico in 1953. She states in her most recent affidavit that she resided in the United States from 1961 to 1967 and from 1971 to 1972. The applicant's mother and grandmother stated in previously submitted affidavits that she returned to Mexico in 1966 and lived there until 1974, after the applicant's birth. The social security earnings statement confirms that she was present in the United States at some point in 1971, but the \$72 in income does not corroborate the year-long presence claimed. The applicant's father's statements in his affidavit are identical to his mother's. The applicant's younger siblings' birth certificates indicate that the applicant's mother was in Mexico in 1967 and 1968. The applicant's mother's school records indicate that she was in Mexico in 1959.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The applicant's mother's recent affidavit states that her original affidavit contained errors with respect to her dates of presence in the United States. The AAO finds good reason to reject the applicant's mother's "corrected" dates, not only because she is an interested witness, but also in view of the importance of the discrepancies noted. The AAO also notes that the documentary evidence submitted does not corroborate the applicant's mother's claims. Thus, the applicant cannot establish that his mother was physically present in the United States as required by former section 301 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 burden in these proceedings is on the applicant to establish his mother's physical presence in the United States by a

preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.