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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: **JUL 11 2011**

Office: HELENA, MT

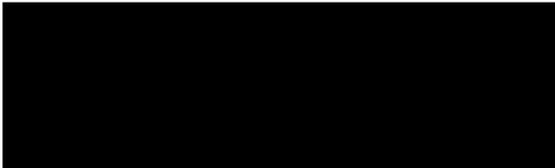
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Section 301(g) of the
Immigration and Nationality Act, 8 U.S.C. § 1401(g) (1979).

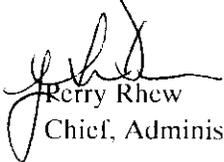
ON BEHALF OF APPLICANT:



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,


Jerry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Helena, Montana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 17, 1979 in Canada. The applicant's parents are [REDACTED]. They were married on September 19, 1976 in Canada. The applicant's mother was born in the United States on February 6, 1954. 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 had the required physical presence in the United States to transmit U.S. citizenship under former section 301(g) of the Act, 8 U.S.C. § 1401(g) (1979).

On appeal, the applicant maintains that his mother was physically present in the United States as required and that the director erred in failing to consider all the evidence submitted in support of the applicant's claim. *See* Appeal Brief.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

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 1964. Former section 301(g) of the Act, as in effect in 1979, before the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, is therefore applicable to the present case.

Former section 301(g) 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.

The applicant must therefore establish that his mother was physically present in the United States for 10 years prior to his birth in 1979, five of which were after 1968 (the applicant's mother's fourteenth birthday).

The record contains, in relevant part, the applicant's mother's birth certificate; the applicant's birth certificate; the applicant's parents' marriage certificate; the applicant's mother's high school diploma (dated in 1971); the applicant's mother's college transcript and receipts issued by Walla Walla College; evidence of college credits obtained at Andrews University; a copy of a bank statement issued in May 1977; a copy of an electric bill dated July 1977 (listing the same address as the bank statement); a letter purportedly written by the applicant's mother in 1978; a notarized statement executed by the applicant's mother's aunt (stating that the applicant was in the United States from April to August 1972); a notarized statement executed by the applicant's maternal grandmother stating that she was physically present in the United States from 1954 to 1979; a notarized statement executed by the applicant's mother's cousin stating that the applicant's mother was present in the United States in July 1970; a notarized statement by the applicant's mother's aunts stating that she was present in the United States from July to August 1968, in June 1958, and in June 1956, respectively; a statement executed by the applicant's mother's friend stating that the applicant's mother was present in the United States from 1959 to 1970; a statement by the applicant's grandmother stating that the applicant's mother visited her during the years 1959 to 1970 (for a period totaling over a year and a half); and a timeline indicating the applicant's mother's periods of physical presence in the United States.

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 record establishes that the applicant's mother was enrolled in college in the United States starting in 1972 and until 1979. The evidence of the applicant's mother's college attendance reflects that she was physically present in the United States for at least five years after her fourteenth birthday. The question remains whether the applicant has established that his mother was present in the United States for 10 years prior to 1979. The AAO finds that he has.

The applicant claims, and the record supports, that the applicant's mother was born in California in 1954. The evidence suggests that the applicant's mother's family moved to Canada shortly after her birth, but returned on numerous occasions, including for extended visits to the applicant's grandparents, starting in 1959. The record also contains a copy of the applicant's high school diploma, issued in 1971 by Auburns Adventist Academy in Washington State. The AAO finds the evidence submitted, including the notarized statements, to be sufficiently detailed and consistent. The record establishes, by a preponderance of the evidence, that the

applicant's mother was physically present in the United States for 10 years prior to 1979, five of which were after the age of 14.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has met his burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained. The matter is returned to the director for the issuance of a certificate of citizenship.