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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: **JUN 08 2011**

Office: ST. PAUL, MN

File:

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the
Immigration and Nationality Act; 8 U.S.C. §1401 (1968)

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, St. Paul, Minnesota, 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 August 13, 1968 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's mother was born on October 17, 1943 in Texas. She married the applicant's father in 1961. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother under section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

The director denied the applicant's citizenship claim upon finding that he had failed to establish that his mother had the required period of physical presence in the United States. *See Decision of the Field Office Director*. The director noted, in part, that the evidence submitted by the applicant contained vague dates that did not allow for an accurate calculation of the time his mother spent in the United States. *Id.* On appeal, the applicant, through counsel, maintain that he has established his mother's physical presence in the United States. *See Counsel's Letter*, dated March 5, 2011. Counsel additionally notes that additional evidence of the applicant's mother's presence in the United States over 57 years ago is difficult to obtain due to the passage of time and the nature of the applicant's mother's family migrant lifestyle. *Id.*

The AAO reviews these proceedings *de novo*. *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. *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 1968. Former section 301(a)(7) of the Act 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.

¹Section 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 1968, five of which were after the age of 14 (after 1957).

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's mother's birth and baptismal certificates, the applicant's maternal grandmother's birth, baptismal, and marriage certificates, school records reflecting the applicant's mother's attendance in 1952 and 1953, and affidavits executed by the applicant's mother, [REDACTED]

The applicant can establish, on the basis of the evidence in the record, that his mother was born in the United States in 1943 and baptized in 1945, also in the United States. He also can establish that the applicant's mother attended school in the United States from 1952 to 1953. The preponderance of the evidence suggests that the applicant's mother indeed resided in the United States until May of 1953, as claimed.

The question remains, however, whether the applicant can establish that his mother was physically present in the United States for five years between October 17, 1957 (after his mother's fourteenth birthday) and August 13, 1968 (the applicant's birth). The evidence in this regard consists solely of the applicant's mother's affidavit, as well as the affidavits of [REDACTED]. [REDACTED] met the applicant's mother in 1961 or 1962, and therefore can only attest to her presence in the United States after 1961 or 1962 at best. She states that the applicant's mother came to stay with her family during the summer and part of the Fall each year. [REDACTED] met the applicant's mother in 1965 and can only personally attest to her presence in the United States since then. She states that the applicant's mother spent six to eight months per year in the United States. [REDACTED] states in her affidavit that the applicant's mother's family resided in Texas from 1948 to 1958, and further states that the applicant's mother spent six to nine months in the United States per year from 1958 to 1980.

The applicant's mother states in her affidavit that her family returned to Mexico in 1953 but returned to the United States shortly thereafter to work in migrant camps until 1958. *See Applicant's Mother's Affidavit.* She states that she met the applicant's father in a migrant camp in 1960 and returned to Mexico in 1961 to meet his family. *Id.* She states that she continued to travel to the United States to work and remained here for eight months at a time. *Id.* The applicant's mother further states that she was married in 1961, and had her children in Mexico in 1961, 1963, 1965 and 1968. *Id.*

The record does not establish, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for five years between 1957 and 1968. The affidavits submitted suggest that the applicant's mother was in the United States during that time, but not that she was here for five years. The applicant therefore has failed to establish that his mother was physically present in the United States for the period required by former section 301(a)(7) of the Act and did not acquire U.S. citizenship at birth under this or any other provision of the Act.

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 failed to meet his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.