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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

[redacted]

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Date: JUN 03 2011 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act; 8 U.S.C. §1401 (1965)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Director, Vermont Service Center, 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 May 31, 1965 in Canada. The applicant's parents, as indicated in his birth certificate, are and The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director denied the applicant's citizenship claim upon finding that he had failed to establish that he acquired U.S. citizenship at birth as claimed. *See Decision of the Service Center Director*. The director noted, in part, that the applicant had failed to submit evidence of his parents' marriage, nationality, military service or physical presence. *Id.* On appeal, the applicant submits his birth certificate and notes that his father's U.S. citizenship and marital status is indicated in that document. *See Form I-290B, Notice of Appeal to the AAO.*

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

The applicant must therefore establish that his father is a U.S. citizen who was physically present in the United States for 10 years prior to 1965, five of which were after the age of 14.

The only relevant evidence in the record is the applicant's birth certificate. The applicant has failed to submit his father's birth certificate, indicating his date and place of birth. The applicant also has failed to submit his parents' marriage certificate or any evidence of his father's physical presence in the United States prior to 1965. The notation in the applicant's birth certificate

[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.

relating to his father's nationality or marital status is insufficient to establish his date or place or birth. The applicant therefore has failed to establish that he was born to a U.S. citizen parent, who had been physically present in the United States for the period required by former section 301(a)(7) of the Act. The applicant did not establish that he acquired 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.