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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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FILE: [REDACTED] Office: NEWARK, NJ

Date: MAR 03 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1973)

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, Newark, New Jersey, 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 April 4, 1973 in Ecuador to [REDACTED] and [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization in 1962. The applicant's mother naturalized after the applicant's eighteenth birthday, in 2006. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his father was physically present in the United States as required under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1973).

On appeal, the applicant, through counsel, states that the applicant's father had the required physical presence in the United States. *See* Appeal Brief. Specifically, counsel notes the applicant's father's social security earnings statement indicating income from 1957 to 1966. *Id.* Further, counsel notes that other corroborating evidence is unavailable due to the passage of time and loss due to natural disasters beyond the applicant's control. *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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1973. Former section 301(a)(7) of the Act therefore applies to the present case.<sup>1</sup>

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.

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<sup>1</sup> 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 father was physically present in the United States for 10 years prior to 1973, five of which were after the age of 14 (after 1948).

The record contains the following evidence related to the applicant's father's physical presence in the United States: 1) an affidavit executed by the applicant's father stating that he entered the United States in January 1957 and remained until November 1967; 2) an affidavit executed by the applicant's aunt stating that the applicant's father moved to the United States in September or October of 1956; 3) the applicant's father's evidence of naturalization (in 1962); 4) the applicant's father's social security earnings statement listing income from 1957 to 1966; and 5) the applicant's father evidence of military service between 1958 and 1962.

On appeal, counsel maintains that the applicant's father's social security statement indicates that he was present in the United States for 10 years prior to 1973. The AAO notes that the income reflected on the statement pertaining to the year 1957 is \$58. The statement, therefore, does not establish that the applicant's father was physically present in the United States in 1957. The applicant's father states in his affidavit that he entered the United States in January 1957. His sister, however, states that he came to the United States in late 1956. It is therefore unclear when the applicant's father's physical presence in the United States began.

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.)

In view of the important discrepancy in the date claimed as the applicant's father's entry into the United States, as well as the \$58 income listed for 1957 and \$0 for 1967, the applicant has not established that his father was present in the United States starting in January 1957. The evidence suggests that the applicant's father was physically present in the United States for about 9 years, starting at the end of 1957 until the end of 1966.

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.