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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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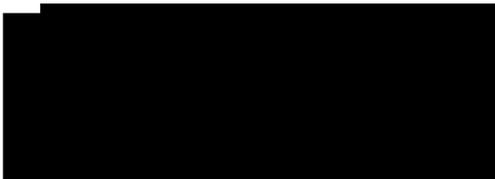
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FILE: [REDACTED] Office: HARLINGEN, TX Date: **MAR 10 2011**

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 (1961)

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, Harlingen, 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 January 1, 1961 in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED]. The applicant's parents were married in Mexico in January 1956. The applicant's mother, a United States citizen, was born on March 17, 1940 in Rio Rico.¹ 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 as required under former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

On appeal, the applicant, through counsel, states that the applicant's mother had the required physical presence in the United States. *See* Appeal Brief. Specifically, counsel maintains that the applicant's mother's affidavit provided sufficient evidence of her physical presence in the United States.

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 1961. Former section 301(a)(7) of the Act therefore applies to the present case.²

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.

¹Rio Rico, a town in the Horton Tract, was part of the United States until 1970. *See Matter of Cantu*, 17 I & N Dec. 190 (BIA; AG 1978).

²Section 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 1961, five of which were after the age of 14 (after 1954).

The record contains, in relevant part, the applicant's mother's certificate of citizenship evidencing her U.S. citizenship at birth, her marriage certificate, her eldest daughter's birth certificate, her affidavit, the affidavit of [REDACTED] the applicant's birth certificate and documentation related to a past Application for Certificate of Citizenship (which was denied).

The applicant's mother's affidavit states that she resided with her parents until her marriage in 1956, but continued to reside in the United States until a few months before the applicant was born. [REDACTED] states in her affidavit that she can attest to the applicant's mother residence in Rio Rico until 1951, when she herself immigrated.

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 AAO's previous decision in this matter, dated October 21, 2005, notes that the evidence submitted with the applicant's previous application, including an affidavit executed by his mother, state that she resided in Rio Rico only until the birth of her eldest daughter in 1956. This discrepancy has not been explained nor has the applicant's mother's recent affidavit been corroborated. The record does not indicate that the applicant's mother was physically present in the United States between 1956 and 1961. Therefore, although the record establishes that the applicant's mother was physically present in the United States for 10 years prior to 1961, it does not demonstrate that five of those years were after 1954 (after the applicant's mother's fourteenth birthday).

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.