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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: NEW ORLEANS, LA 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 (1978)

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, New Orleans, Louisiana, 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 November 21, 1978 in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in January 1978. The applicant's mother was born in Mexico in 1955 but acquired U.S. citizenship at birth through her U.S. citizen parent. 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(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)(1978).

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 submits correspondence between the applicant's mother's family and an attorney dating back to 1967 through 1969.

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 1978. Former section 301(g) of the Act therefore applies to the present case.¹

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.

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.

The applicant must therefore establish that his mother was physically present in the United States for 10 years prior to 1978, five of which were after the age of 14 (after 1969).

The record contains a social security earnings statement pertaining to the applicant's mother indicating that she had employment income in the United States, in relevant part, from 1969 until 1978. The record also contains the correspondence between the applicant's grandfather and his attorney, and immigration appointment notices, dated in 1967 to 1969. The AAO notes that the documents dated in 1967 are addressed to the applicant's father in Mexico. The AAO further notes that the applicant's mother stated in her application for a certificate of citizenship, which was submitted in 1967, that she was residing in Mexico even after her arrival in the United States on November 9, 1967.

The record contains affidavits executed by some of the applicant's mother's relatives and friends. The affidavits generally state that the applicant's mother began residing in the United States in 1967, about the time that her citizenship application was submitted. The affidavits, however, contain several important discrepancies. For example, Mrs. [REDACTED] states that the applicant's mother's family resided in Los Banos, California in 1967 whereas Mrs. [REDACTED] states that they resided in Yolo, California. The affiants also do not clearly state how many or which months the applicant's mother was present in the United States in 1967. Most importantly, the affidavits contradict the applicant's mother's own Application for a Certificate of Citizenship.

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 evidence in the record does not establish that the applicant's mother was physically present in the United States prior to 1969. The applicant therefore cannot prove, by a preponderance of the evidence, that his mother was physically present in the United States for 10 years prior to 1978, his date of birth.

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.