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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

PUBLIC COPY

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BROOKLYN, NY 11203

FILE: [Redacted] Office: NEW YORK, NY Date: **MAR 21 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 (1974)

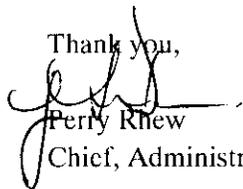
ON BEHALF OF APPLICANT:

[Redacted]

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 District Director, New York, New York, 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 29, 1974 in Honduras. The applicant's parents, as indicated in his birth certificate, are [REDACTED]

[REDACTED] The applicant's parents were married in Honduras in July 1971. The applicant's father, who was born in Honduras on October 26, 1926, became a United States citizen upon his naturalization on March 10, 1965. 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 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 (1974).

On appeal, the applicant, through counsel, states that the director erred in finding that the applicant was ineligible for U.S. citizenship. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. Although counsel indicated on the Form I-290B that she would submit a brief to the AAO within 30 days, or by November 14, 2010, no additional evidence has been received into the record. The record is, therefore, considered complete.

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 1974. 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 father was physically present in the United States for 10 years prior to 1974, five of which were after the age of 14 (after 1940).

The applicant's father was admitted to the United States as a lawful permanent resident in 1955, and naturalized in 1965. The applicant was born in 1974. The record contains evidence that the applicant's father served in "foreign" or "coastwise" merchant marine vessels from 1960 through 1974. As noted by the District Director, the U.S. Department of State's Foreign Affairs Manual, at 7 FAM 1133.3-3(b)(7), states, in pertinent part:

Time spent on voyages defined by the Coast Guard as "foreign" or "coastwise" (those from one U.S. port to another in a non-adjacent State in which the vessel travels outside U.S. territorial waters) are not considered physical presence in the United States.

The record also contains a copy of a letter confirming the applicant's father's membership in the AFL-CIO since 1957 and an Affidavit of Support stating that he has maintained a savings account at the Whitney National Bank since 1957. In light of the time spent by the applicant's father as a seaman in "foreign" or "coastwise" vessels, the record does not establish that the applicant's father was physically present in the United States for 10 years prior to 1974.

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.