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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: LOS ANGELES, CA 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 (1955).

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 Field Office Director, Los Angeles, California, 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 24, 1955 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. They were married in Mexico on April 20, 1951. The applicant's mother was born in California on December 11, 1930. 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 had the required physical presence in the United States to transmit U.S. citizenship under former section 301 of the Act, 8 U.S.C. § 1401 (1955).¹ The director noted that the applicant's previously filed applications for certificate of citizenship were denied.²

On appeal, the applicant maintains that the director applied "the wrong statute." See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant states that he is eligible for U.S. citizenship under section 301(g) of the Act, as amended in 1986. *Id.*

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 1955. Former section 301(a)(7) of the Act, as in effect in 1955, therefore applies to the present case.

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 mother was physically present in the United States for 10 years prior to his birth in 1955, five of which were after her fourteenth birthday (after 1944). The applicant claims that his mother was physically present in the United States

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.

² The 2006 application was denied and the applicant's appeal of the denial was rejected by this office as untimely. The applicant had previously filed two other applications for a certificate of citizenship in 1968 and 1991, respectively. These applications were also denied.

from birth until 1951. The record, however, does not corroborate his claim. The record contains, in relevant part, the applicant's mother's birth certificate, her social security earnings information indicating employment income starting in 1955, a copy of a 1930 census record, an affidavit from the applicant's father indicating that he met the applicant's mother in 1950, and an affidavit from the applicant's mother executed in 1968 indicating that she moved to Mexico in 1934 and did not return to the United States until 1953. The record also contains copies of the applicant's two older sibling's birth certificates indicating their birth in Mexico in 1952 and 1953, respectively. The applicant's younger siblings were born in the United States. The applicant's mother's younger siblings were born in Mexico in 1935, 1938, 1942 and 1946, respectively. *See* Argument in Support of Derivative Citizenship Claim, filed in 2008. The record does not, by a preponderance of the evidence, establish that the applicant's mother was physically present in the United States for 10 years prior to 1955, five of which were after the age of 14.

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.