

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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**



E2

Date: **AUG 02 2012**

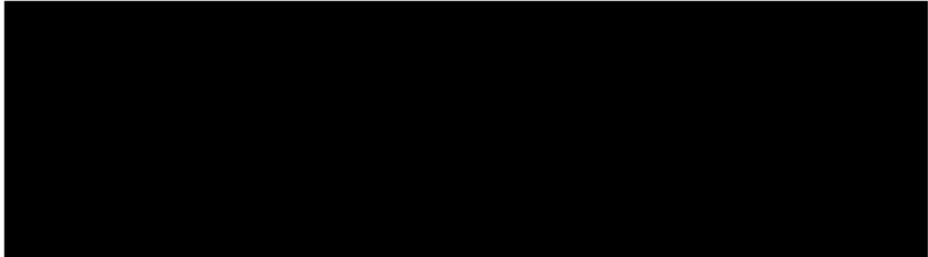
Office: DALLAS, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to section 301 of the
Immigration and Nationality Act, 8 U.S.C. § 1401 (1966)

ON BEHALF OF APPLICANT:

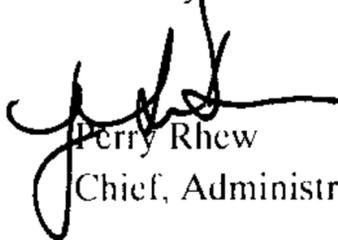


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Dallas, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 9, 1966 in Mexico to [REDACTED] and [REDACTED]. The applicant's father was born in Texas on October 7, 1921. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Mexico in 1953. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1973).

The field office director denied the applicant's citizenship claim upon finding that he had not established that his father was physically present in the United States as required by former section 301(a)(7) of the Act.

On appeal, the applicant, through counsel, states that he is providing additional evidence of his father's physical presence in the United States. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The evidence attached to the appeal, however, is, in relevant part, the same evidence previously provided to the director.

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 1966. 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.

The applicant must therefore establish that his father was physically present in the United States for 10 years prior to 1966, five of which were after the age of 14 (after 1935).

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 record contains the following evidence relevant to the applicant's father's physical presence in the United States: 1) the applicant's birth certificate; 2) the applicant's father's birth, baptismal and marriage certificates; 3) social security earnings statements dated after the applicant's birth; and 4) affidavits executed by the applicant's father's co-workers and relatives attesting generally to his presence in the United States from 1954 to 1966.

The AAO finds that the record does not support the applicant's claim that his father was physically present in the United States for 10 years prior to 1966. The applicant claims that his father was present in the United States from birth until the age of five, and that he then returned to the United States in the 1950s to work in the fields. The record indicates, however, that the applicant was married in Mexico in 1953. The record also indicates that 13 of the applicant's siblings were born in Mexico and that the applicant's family maintained their residence in Mexico until 1982. Additionally, the applicant's father's birth in the United States is evidenced by a delayed birth certificate issued in 1963. The only evidence of the applicant's father's presence in the United States in the 1950's and early 1960s, is the affidavits provided by his co-workers and relatives. These affidavits are not sufficiently detailed or consistent, and therefore do not establish that the applicant's father was present in the United States for 10 years prior to 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.