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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**

E₂

Date: **AUG 16 2012**

Office: MIAMI, FL

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7) (1958)

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 Field Office Director (the director), Miami Florida, denied the Application for Certificate of Citizenship (Form N-600) 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 in Colombia on October 19, 1958. The applicant's parents were married at the time of his birth. The applicant's father was born in the United States on July 3, 1930. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1958).

The director determined that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that his father met the physical presence requirements under former section 301(a)(7) of the Act. *See Decision of the Field Office Director*, dated November 2, 2011. The application was denied accordingly. On appeal, counsel contends that the director erroneously reviewed the evidence submitted by the applicant in determining the applicant's father's physical presence in the United States. *See Form I-290B*, dated November 17, 2011. Counsel submits the Form I-290B and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1958. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.¹

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . 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.

Accordingly, the applicant must establish that his father is a U.S. citizen who was physically present in the United States for a period or periods of at least ten years, at least five of which were after July 3, 1944, the date on which the applicant's father turned 14 years of age, and before the applicant's birth on October 19, 1958. The applicant contends that his father, [REDACTED] was born in the United States and resided in the United States from his birth until 1932, from 1945 until 1949 and from November 18, 1949 until 1952. *See Form N-600, Application for Certificate of Citizenship*.

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

In support of these contentions, the applicant presented a Colombian Birth Certificate indicating that he was born to [REDACTED] October 19, 1958 in Barranquilla, Atlantico, Colombia. *See Birth Certificate for Pedro Juan Catinchi Daza*, issued on December 20, 2002. The applicant presented a Wilmington, Delaware Birth Certificate indicating that [REDACTED]'s birth was registered in Wilmington, Delaware on July 3, 1930. *See Certificate of Birth*, issued July 23, 1930. The applicant presented a Certificate of Baptism reflecting that the applicant's father was baptized in Wilmington, Delaware on December 7, 1930. *See Certificate of Baptism*, issued February 13, 1946. The applicant presented a Marriage Certificate for [REDACTED] indicating that the applicant's parents were married in Barranquilla, Atlantico, Colombia on July 16, 1956. *See Marriage Certificate*, issued on January 15, 1979.

The applicant presented an Application for Admission to the Eastern Military Academy (EMA) seeking admission for the applicant's father for the academic year September 15, 1945 through June 7, 1946, reflecting that the last school attended by the applicant's father was Collegio Americas. *See Application for Admission*, dated August 17, 1945. The applicant presented an Enrollment Contract for the EMA seeking admission for the applicant's father for the academic year September 1946 through June 1947, reflecting that the applicant's father resided in Barranquilla, Colombia and that the last school attended by the applicant's father was EMA. *See Enrollment Contract*, dated April 30, 1946. The applicant presented an Enrollment Contract for the EMA seeking admission for the applicant's father for the academic year September 1947 through June 1948, reflecting that the applicant's father resided in Barranquilla, Colombia (referring to information already on file for the applicant's father) and that the last school attended by the applicant's father was EMA (referring to information already on file for the applicant's father). *See Enrollment Contract*, dated June 5, 1947. The applicant presented School Grade sheets for the applicant's father in English indicating grades for school years 1945-1946 and 1946-1947 (Grade 8), indicating that the applicant's father's last school attended was Colegio Americas, Barranquilla, Colombia. *See School Grades Sheet*. The applicant presented a Stanford Achievement Test for the applicant's father indicating that the applicant's father took the test while he was 16 years old (Grade 9) and was attending EMA. *See Stanford Achievement Test*, date unclear.² The applicant presented a National Intelligence Test for the applicant's father indicating that the applicant's father took the test while he was 16 years old (Grade 9) and was attending EMA. *See National Intelligence Test*, date unclear. The applicant submitted numerous illegible copies of what appear to be report cards for the applicant's father, which are in English and indicate that the grades were issued for school years 1946-1947 and 1947-1948. *See Report Cards*.

The applicant presented an Immunization Register reflecting that his father received immunizations in November 1949 and February 1950. *See Immunization Register*. The applicant presented a United States Withholding Statement for [REDACTED] for the period January 1, 1952 until May 29, 1952 reflecting that the applicant's father was employed by the U.S. Army and was, at the time, stationed at the 1201st separation point in New York. *See 1952 Withholding Statement*. The applicant presented a Public Voucher for Refunds from the Philadelphia District Office of the Veterans Administration for [REDACTED] indicating that the applicant's father was covered by military insurance from November 21, 1949 until it lapsed on December 21, 1952. *See Public Voucher for*

² The photocopy of the document is faded in places.

Refunds, issued February 28, 1955. The applicant presented a letter from the Military to the applicant's father instructing him on how to complete an enclosed certificate of service indicating that the applicant's father resided in Barranquilla, Colombia. *See Form I-327*, dated July 27, 1955. A letter from the Military National Personnel Records Center indicates that the applicant's father's military records were most likely destroyed in a fire at the records center, which verifies the applicant's father's enlistment on November 18, 1949, but is unable to verify the applicant's father's date of discharge. *See Letter National Personnel Records Center*, dated July 15, 2010.³

Here, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for at least ten years before the applicant's birth in 1958, five of which were attained after July 3, 1944. The Birth Certificate, Baptismal Certificate, School Records and Military Records only provide evidence that [REDACTED] was present in the United States in 1930; from September through June for school years 1945-1946, 1946-1947, 1947-1948 and 1948-1949; and served in the Armed Forces of the United States from November 18, 1949 until May 29, 1952. There are no detailed declarations from individuals with direct knowledge of the applicant's father's residence in the United States and service in the Armed Forces and there is no other documentation to establish that [REDACTED] lived in the United States from 1930 until 1932 and during summer recesses from 1945 through 1949.⁴ *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for the requisite period. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ Attached to the letter are associated replies to inquiries which render no further information.

⁴ Even if the applicant were able to establish all of the claimed dates of residence on the Form N-600, the dates comprise a period of less than ten years.