



U.S. Citizenship
and Immigration
Services

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[Redacted]

Date: **DEC 05 2012**

Office: SAN ANTONIO, TX

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1972).

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, 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 [REDACTED] 1972 in Mexico. The applicant's father [REDACTED] was born on [REDACTED] 1936 in Mexico. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Mexico in 1965. The applicant claims that his father derived U.S. citizenship at birth through a U.S. citizen parent. 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 INA), 8 U.S.C. §1401(a)(7)(1972).¹

The field office director denied the applicant's citizenship claim upon finding, in relevant part, that the applicant had failed to establish by a preponderance of the evidence that his paternal grandparents were born in the United States. Thus, the director concluded that the applicant could not establish that his father derived U.S. citizenship or that the applicant himself derived U.S. citizenship from his father. Alternatively, the director also noted that the applicant had failed to establish that his father had the required physical presence in the United States prior to the applicant's birth. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth through his father who, in turn, derived U.S. citizenship through his U.S. citizen parents. The applicant submits a brief in support of his appeal.

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 1972. Former section 301(a)(7) of the INA therefore applies to the present case.

Former section 301(a)(7) of the INA 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

¹ Former section 301(a)(7) of the INA 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 United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the INA, the applicant must therefore establish that his father, through whom he claims U.S. citizenship, was physically present in the United States for 10 years prior to [REDACTED] 1972, five of which were after his father's fourteenth birthday (after 1950).

The record contains, in relevant part, the applicant's birth certificate, the applicant's parents' marriage certificate, the applicant's father's birth certificate, the applicant's paternal grandfather's delayed birth certificate, the applicant's paternal grandmother's baptismal, confirmation and school records, the applicant's father's social security records, and a number of letters and affidavits executed by the applicant's relatives.

The record indicates that the applicant's parents were born in Mexico and married in 1965. The applicant maintains that his father derived U.S. citizenship through his parents at birth. The record does not contain any documentary evidence, such as a certificate of citizenship, relating to the applicant's father. Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1993) is the applicable statute in determining whether U.S. citizenship was transmitted at birth to the applicant's father.

R.S. section 1993 provided, in relevant part that a child:

[B]orn out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. . . .

The record contains the applicant's grandfather's delayed birth certificate, but no evidence that he resided in the United States prior to the applicant's father's birth in 1936. *See* Social Security Administration records listing employment beginning in 1955. The record contains baptismal, confirmation, census and school records relating to the applicant's grandmother suggesting that she was present in the United States in the 1920s, but does not contain a birth certificate. The record also does not contain the applicant's grandparents' marriage certificate. The applicant's father could not acquire U.S. citizenship at birth because the applicant's grandfather did not reside in the United States prior to 1936. The record also does not establish, by a preponderance of the evidence, that the applicant's grandmother was born in the United States as claimed. The applicant therefore has failed to meet his burden of proof to establish, by a preponderance of the evidence, that his father acquired U.S. citizenship at birth.

The applicant also did not establish that his father fulfilled any applicable retention requirements, even if he acquired U.S. citizenship at birth as claimed. The Nationality Act of 1940 repealed R.S. section 1993, and was, in most respects, superseded by the INA. Section 301(c) of the INA made section 301(b) of the INA applicable to persons who did not comply with the retention provisions of section 201(g) of the Nationality Act of 1940. *See* 7 Foreign Affairs Manual

(FAM) 1135.8(c). Section 301(b) of the INA, in turn, provided that a child who acquired citizenship at birth abroad must be continuously physically present in the United States for a period of five years between the ages of fourteen and twenty-eight in order to retain his or her U.S. citizenship. A two-year retention requirement was later substituted retroactively in 1972. *See* 7 FAM 1100, Appendix L, *Historical Context of Retention Provisions* at (f). Public Law 95-432, effective October 10, 1978, subsequently repealed the retention provisions of the 1952 Act; however, “because the repeal was prospective in application, it did not benefit persons born on or after May 24, 1934, and before October 10, 1952.” *See Id.* at (g)(2).

The record indicates that the applicant's father immigrated to the United States in September 1962, a month before his twenty-sixth birthday. His social security earnings records indicate that his employment in the United States began in 1963. The applicant's father did not comply with the applicable retention requirements and therefore lost his claim to U.S. citizenship prior to the applicant's birth in 1972. The applicant therefore cannot establish that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the INA.

Having found that the applicant's father was not a U.S. citizen at the time of the applicant's birth, the AAO need not address his claim that his father was physically present in the United States for ten years prior to the applicant's birth.

“There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.

ORDER: The appeal is dismissed.