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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: **FEB 28 2012**

Office: SAN ANTONIO, TX

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1961).

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, 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 [REDACTED] 1961 in Mexico. The applicant's mother, [REDACTED] was born in Michigan [REDACTED]. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico in 1950. 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 his eligibility under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1961), because he could not demonstrate that his mother was physically present in the United States for the statutorily required period of time.

On appeal, the applicant concedes that his mother was not physically present in the United States as required but maintains that she should be deemed to have been physically present in the United States, constructively, based upon her mother's (the applicant's maternal grandmother), wrongful expatriation in 1932. *See Applicant's Appeal Brief.*

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 1961. 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.

¹Former section 301(a)(7) of the 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.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that his mother was physically present in the United States for 10 years prior to 1961, five of which were after the age of 14 (after 1945).

The applicant claims that his mother was physically present in the United States from birth until 1933, and from 1955 until 1993. The applicant states, however, that his mother should be deemed to have been present in the United States, constructively, on the basis of her mother's (the applicant's grandmother) wrongful expatriation. The applicant maintains that his grandmother, a native-born U.S. citizen, was found to have lost her U.S. citizenship upon her marriage to a Mexican national.

In *Drozd v. INS*, 155 F.3d 81, 87 (2nd Cir. 1998), the Second Circuit Court of Appeals made clear that the principle of constructive residence applies only to cases involving *retention* of citizenship, and that the principle does not apply to the *transmission* of citizenship.² The Circuit Court of Appeals clarified further that courts "have rejected the argument that statutory requirements to transmit citizenship can be constructively satisfied" and that "[t]he application of constructive residence was inappropriate in a citizenship transmission case." *Id.* (Citations and quotations omitted). The applicant's mother cannot constructively fulfill the physical presence requirement in former section 301 of the Act. Because the applicant's mother was not in fact physically present in the United States for 10 years prior to 1961, including five years after 1945, the applicant did not acquire U.S. citizenship at birth under former section 301 of the Act.

"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. 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.

² The applicant cites *Matter of Navarrete*, 12 I&N Dec. 138 (BIA 1967) and *Matter of Farley*, 11 I&N Dec. (BIA 1965). These cases are discussed, and rejected, in *Drozd v. INS*, *supra*, because they relate to retention of U.S. citizenship under section 301(b) of the Act, not transmission under section 301(a).