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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

[Redacted]

Date: **JUL 13 2012** Office: EL PASO, TX FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1949).

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,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, El Paso, 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 July 14, 1949 in Mexico. The applicant's mother, [REDACTED], was born on February 16, 1913 in Texas. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico in 1939. 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 could not demonstrate that his mother resided in the United States for the statutorily required period of time. On appeal, the applicant, through counsel, states that the evidence provided is sufficient to establish his eligibility. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1949. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

Section 201(g) of the Nationality Act states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In order to acquire U.S. citizenship at birth, the applicant must therefore establish that his mother resided in the United States for 10 years prior to 1949, five of which were after the age of 16 (after 1929).

The record contains, in relevant part, a copy of the applicant's mother's delayed birth certificate and baptismal certificate, a copy of his parents' marriage certificate, two identical affidavits signed by the applicant's maternal uncles indicating that the applicant's mother was in the United States from birth until 1915 and from 1927 to 1939, and a copy of the applicant's mother's school record indicating her enrollment from 1927 to 1930.

The AAO finds that the evidence in the record fails to establish that the applicant's mother resided in the United States for 10 years prior to 1949, five of which were after 1929. The evidence indicates that the applicant's mother may have been enrolled in school in El Paso

between 1927 and 1930, but there is no evidence to corroborate the applicant's uncles' claims that she resided in the United States from 1927 until 1939.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

Here, the applicant's claim is not supported by the evidence in the record which is limited to the applicant's mother's school record, which at best corroborates three years of presence in the United States, and his uncles' identical affidavits.

“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.