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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: HARLINGEN, TX

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

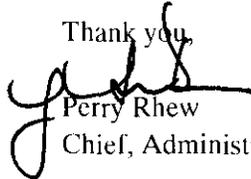
APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1977).

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, Harlingen, 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] in Mexico. The applicant's parents, [REDACTED] were married in Mexico in 1960. The applicant's mother was born in Mexico [REDACTED], but acquired U.S. citizenship at birth through her U.S. citizen parent. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1977).¹

The field office director denied the applicant's citizenship claim upon finding that he had failed to demonstrate that his mother was physically present in the United States for the statutorily required period of time.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth and submits additional affidavits in support of his claim.

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 1977. Former section 301(a)(7) of the Act therefore applies to the present case.

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.

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 1977, five of which were after her fourteenth birthday (after 1956).

¹ Former 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.

The record contains, in relevant part, the applicant's mother's and grandmother's citizenship certificates, the applicant's parents' marriage certificate, and affidavits executed by the applicant's mother, the applicant's mother's uncle, and the applicant's mother's cousins. The affidavits submitted purport to establish, in relevant part, that the applicant's mother was present in the United States from 1956 to 1977. The applicant's mother explains that she was married in Mexico in 1960, and had her children in Mexico in 1961, 1964, 1968, 1970, 1973 and 1977. See Affidavit of [REDACTED]. The applicant's mother further states, however, that she only remained in Mexico for one month after each child's birth, and then return to the United States. *Id.*

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.)

Although the affidavits submitted on appeal are consistent with the applicant's claim, they are submitted by interested witnesses and uncorroborated by any documentary evidence. The AAO finds that the fact that the applicant's mother was married in Mexico and had her six children in Mexico suggests that she was indeed in Mexico during the relevant period. The evidence in the record does not demonstrate that the applicant's mother was present in the United States for ten years prior to 1977, five of which were after 1956. The applicant therefore did not acquire U.S. citizenship under former section 301(a)(7) or any other provision 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.