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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



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Date: **JUN 13 2012**

Office: SAN DIEGO, CA

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1963).

ON BEHALF OF APPLICANT:

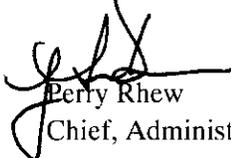


INSTRUCTIONS:

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 with the field office or service center that originally decided your case by filing a 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 District Director, San Diego, California, and the Administrative Appeals Office (AAO) sustained the applicant's appeal. Subsequent review of evidence not previously available required the AAO to reopen and reconsider the matter, after providing the applicant a 33-day period to supplement the record. Mistakenly assuming that a certificate of citizenship had been issued, the AAO remanded the matter to the director to consider commencing cancellation proceedings. The AAO again reopened the matter and provided the applicant another 33-day period to supplement the record before issuance of a new decision. The AAO has considered the brief and supplemental evidence provided by the applicant. The appeal will be dismissed.

The record reflects that the applicant was born on [REDACTED]. The applicant's parents are [REDACTED]. The applicant's father was born in Mexico on [REDACTED], but acquired U.S. citizenship at birth through his mother, the applicant's grandmother. The applicant's parents were married in Mexico on [REDACTED].

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 1963. Former section 301(a)(7) of the Act therefore applies to the present case.<sup>1</sup>

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 father was physically present in the United States for 10 years prior to 1963, five of which were after the age of 14 (after 1958).

The 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)(1963), because he could not demonstrate that his father was physically present in the United States for the statutorily required period of time. As noted above, the AAO first sustained the applicant's

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<sup>1</sup>Section 301(a)(7) of the former 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.

appeal. Upon review of evidence not previously before the AAO, specifically, the applicant's *criminal trial transcript and his father's administrative file, the matter was reopened.*

The AAO's review of the applicant's criminal trial transcript and his father's administrative file revealed many inconsistencies, which are discussed in detail in the AAO's March 26, 2012 Decision. *See* March 26, 2012 Decision of the AAO at 3-5. The applicant was afforded an opportunity to submit a brief or additional evidence to clarify the stated inconsistencies and demonstrate that his father was physically present in the United States for ten years prior to 1963, five of which were after 1958.

The applicant, through counsel, submitted a brief accompanied by a sworn statement executed by his mother. The applicant's mother states, in relevant part, that she met the applicant's father in 1960. *See* Affidavit of [REDACTED]. The applicant's mother further states that the applicant's father resided and worked in the United States, but visited her during the day every Monday. *Id.* The applicant was born on [REDACTED]. The AAO finds that the applicant's mother's statements, and counsel's explanations, do not clarify the inconsistencies found in the record. The applicant cannot demonstrate that his father was physically present in the United States for ten years prior to 1963, five of which were after 1958, on the basis of testimony by his mother who only met the applicant's father in 1960. It remains unclear, at best, where the applicant's father was residing between 1950 and 1958, and between 1958 and 1963. There are significant discrepancies in the record to cast doubt on the applicant's claim that his father was physically present in the United States for five years between February 1958 and August 1963.<sup>2</sup> The applicant therefore did not acquire U.S. citizenship at birth through his father 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. 8 C.F.R. § 320.3. Here, the applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO notes the Board of Immigration Appeals finding 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.)