



U.S. Citizenship  
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Date: **JUN 1 8 2012**

Office: HARLINGEN, TX



IN RE: Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1966).

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,

Perty 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.<sup>1</sup> The appeal will be dismissed.

The record reflects that the applicant was born on April 13, 1966 in Mexico. The applicant's parents are [REDACTED]. The applicant's parents were married in Mexico in 1948. The applicant's father was born in Texas on July 4, 1927. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1966).

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish her eligibility because she could not demonstrate that her father was physically present in the United States for the statutorily required period of time.

On appeal, the applicant, through counsel, maintains that she acquired U.S. citizenship at birth and that she submitted sufficient evidence of her father's physical presence in the United States. See 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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1966. Former section 301(a)(7) of the Act therefore applies to the present case.<sup>2</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.

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<sup>1</sup> The AAO notes that the applicant's Form N-600, Application for Certificate of Citizenship, was first denied in 2004. In accordance with 8 C.F.R. § 341.6, the applicant filed a motion to reopen in lieu of a second application in 2009. The denial of that motion to reopen is the subject of the instant appeal.

<sup>2</sup> 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.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that her father was physically present in the United States for 10 years prior to 1966, five of which were after the age of 14 (after 1941).

The record contains, in relevant part, the applicant's birth certificate, a copy of the applicant's father's delayed birth certificate, a copy of her parents' marriage certificate, several affidavits from her father and his acquaintances attesting to his presence in the United States, and a social security earnings statement indicating no employment income from 1937 through 1950 and \$350.38 from 1951 through 1973. The applicant claims that her father was physically present in the United States from 1927. *See* Physical Presence Information Sheet dated July 20, 2011. That information sheet further indicates that the applicant's father's brother, Lucio, was born in Texas in 1928, and his five other siblings were born in Mexico from 1932 to 1938. *Id.* Additionally, the information sheet reflects that the applicant's seven younger siblings were all born in Mexico from 1949 through 1965. *Id.* The applicant's father states in his affidavit, however, that he was present in the United States from birth, in 1927, until the age of 4. *See* Affidavit of [REDACTED]. The applicant's father states that he returned to the United States "on or about" 1950. *Id.* Although the applicant's father states that he married in Mexico in 1948 and had all 13 of his children in Mexico, he explains that he worked in the United States starting in 1950 with several laborer contractors. *Id.*

The AAO finds that the evidence in the record fails to establish that the applicant's father had the physical presence in the United States prior to the applicant's birth required to transmit U.S. citizenship under former section 301(a)(7) of the Act. The applicant's father's statement indicates, generally, that he was employed in the United States starting in 1950. The remaining affidavits submitted in support of this claim do not fully corroborate the applicant's father's claim. The documentary evidence, including a social security statement indicating no income through 1950 and only \$350.38 from 1951 to 1973, contradicts the applicant's father's claim. The applicant's siblings' births in Mexico cast further doubt on his father's claim that he was physically present in the United States starting in 1950. The AAO finds significant discrepancies in the record with respect to the applicant's father's statements.<sup>3</sup> In sum, the evidence in the record is inconsistent and does not demonstrate that the applicant's father was present in the United States for 10 years prior to 1966, five of which were after 1941.

"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 her burden of proof by establishing the claimed citizenship by a preponderance of the

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<sup>3</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.)

  
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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.