



U.S. Citizenship
and Immigration
Services

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[Redacted]

Date: **JUN 22 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 (1969).

ON BEHALF OF APPLICANT:

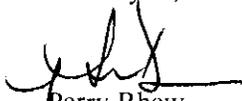
[Redacted]

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,


Jerry 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.¹ 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 1956. The applicant's mother was born in Mexico on October 31, 1934, but acquired U.S. citizenship at birth. The applicant's father became a U.S. citizen upon his naturalization on June 26, 2002, after the applicant's eighteenth birthday. 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)(1969).²

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 re-submits the same evidence purporting to establish his mother's physical presence in the United States. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO; see also Appeal Brief and Exhibits.

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 1969. 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

¹ This is the applicant's second Form N-600, Application for Certificate of Citizenship. The applicant's previous application was denied in 2007 and his appeal of that denial was rejected by the AAO as untimely filed.

² 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 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 1969, five of which were after her fourteenth birthday (after [REDACTED]).

The record contains, in relevant part, the applicant's father's selective service registration certificate, affidavits executed by the applicant's parents and uncle, letters and pictures. The evidence in the record establishes that the applicant's mother was present in the United States from 1957 to 1962. This evidence corroborates the applicant's parents' statements in their respective affidavits. Thus, the applicant can establish that his mother was physically present in the United States for six years. However, the applicant is required to establish that his mother was present in the United States for ten years prior to 1969. There is no evidence in the record to suggest that the applicant's mother returned to the United States anytime between 1962 and 1969, or that she was present in the United States at any time prior to 1957. In sum, the evidence in the record does not demonstrate that the applicant's mother was present in the United States for ten years prior to 1969, five of which were after 1948. 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. 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.