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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  
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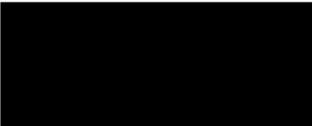


Date: Office: SAN ANTONIO, TX FILE: 

**MAR 08 2012**  
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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, San Antonio, 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] 1966 in Mexico. The applicant's mother was born in Mexico in 1942. The applicant claims that her mother acquired U.S. citizenship at birth through her mother, the applicant's grandmother. She seeks a certificate of citizenship claiming that she, in turn, acquired U.S. citizenship at birth through her mother.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that she is had a U.S. citizen parent at the time of her birth. On appeal, the applicant, through counsel, maintains that she acquired U.S. citizenship at birth under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1966) through her mother who, in turn, acquired U.S. citizenship from her mother, the applicant's grandmother.

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>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 her mother was physically present in the United States for 10 years prior to 1966, five of which were after the age of 14 (after 1956).

The applicant's mother became a U.S. citizen upon her naturalization in 2002. For her to have acquired U.S. citizenship at birth, she would have had to establish that her mother, the applicant's

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<sup>1</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.

grandmother, resided in the United States for ten years prior to 1942, five of which were after 1936. *See* Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).

The applicant claims that her maternal grandmother resided in the United States until 1943. The applicant's grandmother contradicted this claim in her telephonic interview, stating instead that she had resided in Mexico since the time of her marriage until the applicant's mother was born in 1942. The applicant's grandmother's marriage certificate states that she was residing in Mexico in 1940. The record does not establish that the applicant's grandmother resided in the United States as required to transmit U.S. citizenship to the applicant's mother under section 201(g) of the Nationality Act of 1940.

Additionally, even if the applicant's mother had acquired U.S. citizenship at birth as claimed, the record does not establish that she was physically present in the United States for ten years prior to 1966, five of which after 1956. The record indicates that the applicant's mother immigrated to the United States in 1955. She married the applicant's father in Mexico in 1961, and had two children in Mexico in 1963 and 1964. The applicant was born in 1966. Although there is some documentary evidence to suggest that the applicant's mother attended school in the United States in 1958 or 1959, the preponderance of the evidence indicates that she was not physically present in the United States for ten years prior to 1966. The applicant therefore cannot establish that her mother had the physical presence in the United States required to transmit U.S. citizenship pursuant to former section 301(a)(7) 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 her 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.