

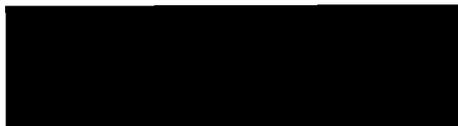
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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E₂

Date:

Office: PHOENIX, AZ

FILE:



IN RE: **MAR 08 2012** Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1957).

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, Phoenix, Arizona, 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] 1957 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1949. The applicant's father was born in Arizona on [REDACTED] 1921. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

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)(1957), because he could not demonstrate that his father 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 that he submitted sufficient evidence of his father's physical presence in the United States. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. Alternatively, the applicant requests additional time to submit evidence and/or a brief to the AAO, but none has been submitted to date. *Id.*

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 1957. Former section 301(a)(7) of the Act therefore applies to the present case.¹

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.

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.

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 1957, five of which were after the age of 14 (after 1935).

The applicant has submitted a copy of his father's delayed birth certificate. The record also contains a copy of the applicant's father's death and marriage certificates. The record also contains the applicant's father's Mexican birth certificate, indicating that his birth was registered in Mexico in 1955. Additionally, the record contains an affidavit executed by the applicant's mother stating that the applicant's father (her husband) told her that he was residing and working at a ranch in Arizona in 1941. The documentary evidence presented and the applicant's mother's statement do not demonstrate that the applicant's father was physically present in the United States as is statutorily required. Specifically, the applicant's mother's statement is based on what she claims she was told by her husband, relates only to the year 1941, does not include details, and is generally unpersuasive. The AAO finds that the applicant has not established that his father had the required physical presence in the United States prior to his birth and therefore did not acquire U.S. citizenship under 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 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.