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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

**PUBLIC COPY**

[REDACTED]

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Date: Office: TUCSON, AZ

**MAR 14 2012**

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 (1974).

ON BEHALF OF APPLICANT:

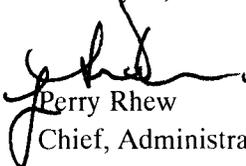
[REDACTED]

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 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 applicant's motion to reopen the denial of her application for certificate of citizenship was dismissed by the Field Office Director, Tucson, 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] 1974 in Mexico. The applicant's mother, [REDACTED] was born in Mexico on [REDACTED] 1951, but acquired U.S. citizenship at birth. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico in 1972. The applicant seeks a certificate of citizenship claiming that she 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 her eligibility under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1974), because she could not demonstrate that her mother was physically present in the United States for the statutorily required period of time.

On appeal, the applicant, through counsel, maintains that the declarations she submitted are sufficient to establish that her mother was physically present in the United States as required. See Applicant's 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 1974. 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 1974, five of which were after the age of 14 (after 1965).

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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.

The applicant claims that her mother was physically present in the United States between 1961 and 1972. In support of her claim, the applicant submitted, in relevant part, the declarations of her mother and her three uncles. The applicant concedes that there is no documentary evidence to demonstrate that she was present in the United States between 1961 and 1972. The AAO finds the affidavits submitted to be insufficient to establish that the applicant's mother was physically present in the United States as claimed.

The Board of Immigration Appeals held 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.)

The applicant has not provided any concrete, objective evidence of her mother's presence in the United States. Her mother and uncles are not dis-interested witnesses, and their declarations are nearly identical, lacking in detail and unpersuasive. The applicant concedes that there is no documentary evidence, such as census, medical or school records, indicating that her mother was present in the United States between 1961 and 1972. The AAO finds that the preponderance of the evidence in the record fails to establish that the applicant's mother was physically present in the United States for ten years prior to 1974, five of which were after 1965.

“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. 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.