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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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Date: **MAY 08 2012**

Office: DENVER, CO

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1964).

ON BEHALF OF APPLICANT:

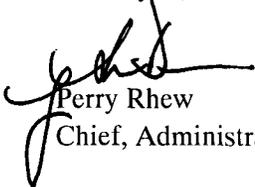


INSTRUCTIONS:

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. 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,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Denver, Colorado, 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] 1964 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 1962. The applicant's father was born in California on [REDACTED] 1936. The applicant's mother became a U.S. citizen in 1990, after the applicant's eighteenth birthday. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office 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 Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1964), because he could not demonstrate that his father was physically present in the United States for the statutorily required period of time. The director also found that the applicant did not derive U.S. citizenship upon his mother's naturalization under former section 321 of the Act, 8 U.S.C. § 1432 (repealed), because she naturalized after his eighteenth birthday.

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. The applicant submits a brief as well as a notarized letter from his father, and a sworn statement from his father's co-workers, in support of his claim that his father had the required physical presence in the United States. The applicant later also submitted amended statements from his father's co-workers.

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 1964. 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

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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.

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 his father was physically present in the United States for 10 years prior to 1964, five of which were after the age of 14 (after 1950).

The record contains, in relevant part, a copy of the applicant's father's birth certificate, a copy of his parents' marriage certificate, a social security earnings statement indicating that the applicant's father earned income in the United States from 1956 to 1964, and copies of two money orders dated in 1964 and 1963. The record also contains a notarized letter submitted by the applicant's father indicating that he was present in the United States from birth until 1940, that he was in Mexico from 1940 until 1952, and that in 1952 he returned to the United States where he was employed as a seasonal laborer. The applicant's father states that he was employed in Corcoran, California. The applicant's father's co-workers indicated in their joint statement that they were all employed at a farm in Oxnard, California in 1953 and 1954. Their amended individual statements, however, indicate that one was employed in Oxnard in 1953 and 1954, and the other in Corcoran, California in 1952 and 1953. The applicant's father further indicates that he was married in Mexico in 1962 and had eight children, the second being the applicant who was born in Mexico in 1964.

The AAO finds that the evidence in the record fails to establish that the applicant's 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. The applicant's father's statement indicates that he was present in the United States, seasonally, starting in 1952. There are significant discrepancies in the record to cast doubt on the applicant's father's statement in this regard.<sup>2</sup> The applicant's parents married in Mexico in 1962, and had their children in Mexico. Although the applicant's father's social security statement indicates that he was employed in the United States, it only lists income starting in 1956 and the amount earned in some years suggests that the applicant's father was not present in the United States for any significant period of time. 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 1964, five of which were after 1950.

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<sup>2</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.)

“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.