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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 09 2012** Office: SAN DIEGO, CA FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1977).

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 District Director, San Diego, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

The record reflects that the applicant was born on [REDACTED] 1977 in Mexico. The applicant's parents, according to his birth certificate, are [REDACTED] and [REDACTED]. The applicant claims that his mother acquired U.S. citizenship at birth through her mother (the applicant's grandmother), who was born in California on [REDACTED] 1927. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The director found that the applicant's mother did not acquire U.S. citizenship at birth, as claimed, pursuant to section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).² The director noted that the applicant's mother's application for a certificate of citizenship was denied, and that her appeal of the denial was dismissed. Thus, the director denied the application upon finding that the applicant could not establish that he acquired U.S. citizenship at birth under former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 (1977).

On appeal, the applicant, through counsel, maintains that the director erred in finding that his grandmother and mother did not have the requisite residence or physical presence in the United States statutorily required. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO and Appeal Brief. The appeal is accompanied by the same documents and affidavits previously submitted.

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 1977. Former section 301(a)(7) of the Act therefore applies to the present case.³

¹ The AAO notes that this is the applicant's second Form N-600, Application for Certificate of Citizenship. His first application was denied on October 27, 2009. An appeal of that denial was dismissed by the AAO on September 10, 2010.

² Section 201(g) of the Nationality Act stated, in pertinent part, that the following shall be nationals and citizens of the United States:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien . . .

³ 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.

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 his mother was physically present in the United States for 10 years prior to 1977, five of which were after the age of 14 (after 1962⁴).

At the outset, however, the applicant must establish that his mother was a U.S. citizen at the time of the applicant's birth. The applicant's mother's application for a certificate of citizenship was denied, and her appeal therefrom was dismissed. The record contains an affidavit executed by the applicant's grandmother stating that she resided in the United States during her childhood and detailing her family's migrant farm worker history. The applicant's grandmother's affidavit is not supported by corroborating and independent evidence of her claimed residence in the United States, nor does it establish that she resided in the United States for ten years prior to the applicant's mother's birth as required by section 201 of the Nationality Act of 1940.

The AAO notes that in dismissing the applicant's mother's appeal of the denial of her application for certificate of citizenship in 2010, the AAO found that the record did not establish that the applicant's grandmother resided in the United States for five years between her sixteenth birthday (on [REDACTED] 1943) and the applicant's mother's birthday (on [REDACTED] 1948). Therefore, the applicant's mother did not establish that she acquired U.S. citizenship at birth through her mother pursuant to section 201 (g) of the Nationality Act. The record now on appeal contains the applicant's grandmother's most current affidavit. As noted above, however, the applicant's grandmother affidavit does not demonstrate that she resided in the United States for the period of time required to transmit U.S. citizenship to the applicant's mother.

The AAO further notes that the record does not contain sufficient evidence to establish that the applicant's mother was physically present in the United States for 10 years prior to 1977, five of which were after 1962. The applicant's mother's affidavit generally states that she spent her childhood in the United States, but her claim that she stayed with her uncle [REDACTED] while her parents worked or returned to Mexico is not corroborated. She concedes that she was in Mexico between 1970 and 1978. The applicant cannot demonstrate that his mother had the required physical presence in the United States prior to 1977, even if he could establish her U.S.

⁴ The applicant's mother was born on [REDACTED] 1948.

citizenship. The applicant thus did not acquire U.S. citizenship under former section 301 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.