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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (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 ANTONIO, TEXAS

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 201(g) of the
Nationality Act of 1940; 8 U.S.C. § 601(g).

ON BEHALF OF APPLICANT:

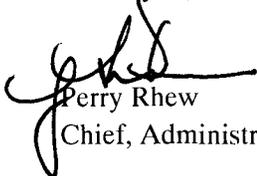
SELF-REPRESENTED

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 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] 1950 in Mexico. The applicant's mother, [REDACTED] was born in Michigan on [REDACTED] 1931. The applicant's parents were married in Mexico in 1950. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother pursuant to section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).

The field office director found that the applicant had failed to establish that his mother had the required residence in the United States prior to his birth in order to transmit U.S. citizenship. The director noted that the applicant's mother could not satisfy the residence requirements constructively as claimed. The application was accordingly denied.

On appeal, the applicant maintains that his mother can constructively satisfy the residence requirement of section 201(g) of the Nationality Act. *See* Appeal Brief. The applicant states that his mother and grandmother were erroneously expatriated and claims that his mother should be afforded the opportunity to constructively satisfy her residence requirement on the basis of the official errors that led to her expatriation. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO notes that “[t]he 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) (citations omitted). The applicant was born in 1950. Section 201(g) of the Nationality Act is therefore applicable to this case.

Section 201(g) of the Nationality Act states, in pertinent part:

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: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years’ residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The applicant must thus establish that his mother resided in the United States for ten years prior to [REDACTED] 1950, five of which were after [REDACTED] 1947 (her sixteenth birthday). The applicant's

mother was 19 years old when the applicant was born. It is therefore mathematically impossible for her to establish that she resided in the United States for five years after attaining the age of 16 but before the applicant's birth.¹ The applicant therefore cannot demonstrate that he acquired U.S. citizenship at birth through his mother.

“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.

¹ The AAO notes that, even if there were five years between the applicant's mother's 16th birthday and the applicant's birth, the residence requirement for purposes of transmission of U.S. citizenship cannot be satisfied constructively. *See Drozd v. INS*, 155 F.3d 81, 87 (2nd Cir. 1998) (clarifying that the principle of constructive residence applies only to cases involving *retention* of citizenship, and that the principle does not apply to the *transmission* of citizenship).