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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 24 2012**

Office: SAN ANTONIO, TX

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1948).

ON BEHALF OF APPLICANT:

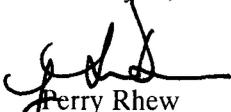


INSTRUCTIONS:

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, or a request for a fee waiver. 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, San Antonio, Texas, 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] 1948 in Mexico. The applicant's mother, [REDACTED] was born on [REDACTED] 1921 in Texas. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico in 1946. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim because he could not demonstrate that his mother resided in the United States for the statutorily required period of time. On appeal, the applicant, through counsel, states that there is an additional witness in support of his claim that his mother resided in the United States as required. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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 1948. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

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

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.

In order to acquire U.S. citizenship at birth, the applicant must therefore establish that his mother resided in the United States for 10 years prior to 1948, five of which were after the age of 16 (after 1937).

The record contains, in relevant part, a copy of the applicant's mother's delayed birth certificate and baptismal certificate, a copy of his parents' marriage certificate, copies of the applicant's mother's voter registration and identification cards, social security income benefits records relating to the applicant's mother, and statements from the applicant and his aunt. The record also contains the applicant's previous application for a certificate of citizenship.

The AAO finds that the evidence in the record fails to establish that the applicant's mother resided in the United States for 10 years prior to 1948, five of which were after 1937. The evidence indicates that the applicant's mother may have resided in the United States from birth

until 1939. There is no evidence, however, to demonstrate that she resided in the United States for five years between 1937 and 1948. Although the applicant indicated on the Notice of Appeal (Form I-290B) that another witness would be able to provide an affidavit attesting to the applicant's mother's residence in the United States, the record does not contain such affidavit.

“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.