



U.S. Citizenship  
and Immigration  
Services

E<sub>2</sub>



Date: **OCT 12 2012**

Office: EL PASO, TX

FILE: 

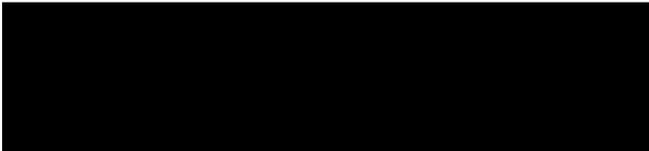
IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1975)

ON BEHALF OF APPLICANT:

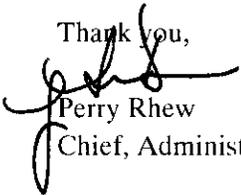


INSTRUCTIONS:

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 in accordance with the instructions on 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, El Paso, 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 May 19, 1975 in Mexico to [REDACTED] and [REDACTED]. The applicant's parents were married in New Mexico in 1974. The applicant's father was born in Mexico on July 1, 1955, but acquired U.S. citizenship through his U.S. citizen parent. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1975).

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his father was physically present in the United States for the period of time required by former section 301(a)(7) of the Act.

On appeal, the applicant, through counsel, states that the applicant's father had the required physical presence in the United States. *See* Appeal Brief. Specifically, counsel maintains that there is sufficient secondary evidence to establish that the applicant's father was present in the United States prior to 1967. *Id.*

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 1975. 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.

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<sup>1</sup> Section 301(a)(7) of the former 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 must therefore establish that his father was physically present in the United States for 10 years prior to 1975, five of which were after the age of 14 (after 1969).

The record contains the following evidence related to the applicant's father's physical presence in the United States: 1) the applicant's sister's birth certificate; 2) a social security earnings record indicating employment in the United States starting in 1974; 3) a photograph dated in 1970; 4) a receipt dated in 1971; and 5) affidavits executed by the applicant's mother, paternal grandmother, and other family members and friends generally indicating that the applicant's father was present in the United States since 1963. The record also contains copies of the Petition for Alien Relative filed in January 1975 by the applicant's grandfather on behalf of the applicant's father. In this Petition, the applicant's grandfather answered "no" to the question (#12) regarding whether the applicant's father had ever been in the United States, and provided an address in Mexico for the applicant's father (question #22).

On appeal, counsel maintains that the affidavits submitted provide sufficient evidence of the applicant's father's presence in the United States since 1963. 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.)

There is an important discrepancy between the information provided by the applicant's grandfather in his Petition for Alien Relative on behalf of the applicant's father and the affidavits submitted in support of the applicant's claim. Specifically, the more contemporaneous Petition for Alien Relative, indicates that the applicant's father was not present in the United States prior to 1975 and that his residence at that time was in Mexico. The affidavits submitted in support of the applicant's citizenship claim, however, state that the applicant's father was present in the United States since 1963. There is good reason to reject the applicant's self-interested contention that his father was present in the United States as early as 1963. Thus, the applicant cannot establish that his father was physically present in the United States for 10 years prior to his birth in 1975.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet his burden of proof to establish that his father was physically present in the United States as required by former section 301(a)(7) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.