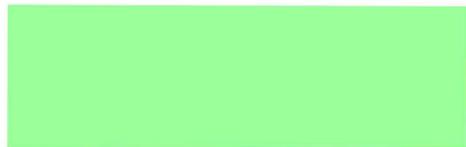


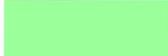


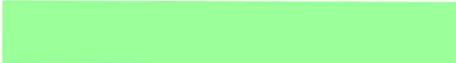
U.S. Citizenship
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Services

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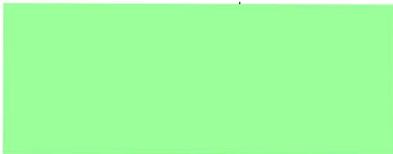
Date: **APR 10 2013** Office: SAN ANTONIO, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1961).

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas, and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant filed a motion to reconsider. The motion will be granted, the AAO's February 28, 2012 decision will be affirmed and the appeal will remain dismissed.

The record reflects that the applicant was born on December 14, 1961 in Mexico. The applicant's mother, [REDACTED], was born in Michigan on [REDACTED]. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico in 1950. 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 upon finding that he had failed to establish his eligibility under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1961), because he could not demonstrate that his mother was physically present in the United States for the statutorily required period of time.

On appeal, the applicant conceded that his mother was not physically present in the United States as required but maintained that she should be deemed to have been physically present in the United States, constructively, based upon the applicant's maternal grandmother's expatriation in 1932. See Applicant's Appeal Brief.

The AAO dismissed the appeal finding 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. See February 28, 2012 Decision of the AAO (*citing Drozd v. INS*, 155 F.3d 81, 87 (2nd Cir. 1998)).

The applicant, through counsel, now seeks reconsideration of the AAO's decision. Pursuant to the regulations, at 8 C.F.R. § 103.5(a)(3), a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy." The applicant's motion is accompanied by a legal brief and meets the regulatory requirements. The motion will therefore be granted.

On reconsideration, counsel maintains that the AAO erred in relying *Drozd, supra*. Counsel also raises constitutional due process claims that go beyond the purview of an administrative appeal and are outside the jurisdiction of this office. The AAO will not address counsel's constitutional arguments or claims regarding the legality of statutes that are binding on the AAO.

As noted above, the applicant in the present matter was born in 1961. Former section 301(a)(7) of the Act therefore applies to this case and requires that the applicant establish that his mother was physically present in the United States for 10 years prior to 1961, five of which were after the age of 14 (after 1945).

The applicant claims that his mother was physically present in the United States from birth until 1933, and from 1955 until 1993. The applicant states, however, that his mother should be

deemed to have been present in the United States, constructively, on the basis of her mother's (the applicant's grandmother) wrongful expatriation. The applicant maintains that his grandmother, a native-born U.S. citizen, was found to have lost her U.S. citizenship upon her marriage to a Mexican national.

As noted in the AAO's February 28, 2012 decision, the Second Circuit Court of Appeals in *Drozd*, 155 F.3d at 87, clarified that the residence requirement for transmission of U.S. citizenship may not be fulfilled constructively. The applicant cites, *inter alia*, *Matter of Navarrete*, 12 I&N Dec. 138 (BIA 1967), *Matter of Farley*, 11 I&N Dec. (BIA 1965), and *Wauchope v. United States Department of State*, 985 F.2d 1407 (9th Cir. 1993). *Navarrete* and *Farley* were discussed, and rejected, in *Drozd*, *supra*, when Second Circuit stated that "[t]he application of constructive residence was inappropriate in a citizenship transmission case." *Drozd* at 87 (citations and quotations omitted). Counsel maintains that the facts in the applicant's case resemble those of *Navarrete*, and are unlike *Drozd*, in that the applicant was erroneously prevented from entering the United States. It is well-established, however, that the physical presence requirement for transmission of U.S. citizenship can be fulfilled on the basis of presence in the United States in any status. See 7 FAM § 1133.3-3(a). The applicant's grandmother's expatriation did not allow her to return to the United States as a U.S. citizen, but there is no evidence that the applicant's mother or grandmother was otherwise illegally or erroneously barred from entering the United States. In any event, the holding in *Drozd* was based upon a finding by the language of section 301 of the Act specifically allowed for two exceptions from the physical presence requirement: (1) honorable service in the U.S. Armed Forces and (2) period of U.S. government employment abroad. *Drozd*, 155 F.2d at 86. The existence of these two specific exceptions indicates that had Congress intended for a third exception for children of persons prevented from entering the United States, such an exception would be articulated. *Id.*

Counsel's reliance on *Wauchope*, *supra*, is likewise misplaced. The Ninth Circuit's holding in *Wauchope* regarding the equal protection claims of mothers seeking to transmit U.S. citizenship was revisited, and rejected, in *United States v. Flores-Villar*, 536 F.3d 990 (9th Cir. 2008) (holding that a mother is not deprived of equal protection rights by different residency requirements). Moreover, as previously noted, constitutional claims are outside the purview of this appeal. The applicant appears to be requesting that he be granted U.S. citizenship as "redress" for the unjust expatriation of his grandmother. The requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and a certificate of citizenship cannot be issued when an applicant fails to meet the relevant statutory provisions set forth in the Act.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his

eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant's mother was not in fact physically present in the United States for 10 years, in any status, prior to 1961, including five years after 1945, the applicant did not acquire U.S. citizenship at birth under former section 301 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. 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 motion is granted. The AAO's February 28, 2012 decision is affirmed.
The appeal is dismissed.