



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 15 2013**

Office: SAN ANTONIO, TX

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1979).

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 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


Ron Rosenber

Acting 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] in Mexico. The applicant's father was born in Mexico on July 23, 1946, but acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant and his mother were admitted to the United States as a lawful permanent resident on July 2, 1993. The applicant's parents were married in Mexico in 1973. 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)(1979).¹

The field office director denied the applicant's citizenship claim upon finding that he had failed to demonstrate that his father was physically present in the United States for the statutorily required period of time.

On appeal, the applicant indicates that his father traveled to the United States in December and January of every year, in addition to the summer, and therefore can establish that he was physically present here for a period of ten years prior to the applicant's birth. The documents submitted by the applicant with his appeal are a San Antonio Public School certificate issued in 1956 and relating to his grandfather, a Mexican form with a family picture, and a 2002 field review sheet relating to the applicant's aunt's dwelling.

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 1979. Former section 301(a)(7) of the Act therefore applies to the present case.

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.

¹ 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.

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 father was physically present in the United States for 10 years prior to 1979, five of which were after the applicant's father's fourteenth birthday (after 1960).

The record contains, in relevant part, the documents submitted on appeal, as described above, as well as the applicant's father's birth and citizenship certificates, the applicant's birth certificate, the applicant's grandfather's social security earnings statement and Medicare card, the applicant's paternal aunt's birth and citizenship certificates, and the citizenship certificate, vaccination certificate and social security records relating to the applicant's other paternal aunt.

The evidence in the record does not establish that the applicant's father was physically present in the United States for ten years prior to 1979. The applicant's father's certificate of citizenship was issued in 1974. He initially stated that he had begun residing in the United States in 1974. He married the applicant's mother in Mexico in 1973. On appeal, the applicant indicates that his father spent December and January with his father in the United States, in addition to his summer vacations. There is no documentary evidence in the record to support the applicant's claims.

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.)

The evidence submitted indicates that the applicant's grandfather may have been present in the United States starting in the year 1965. This evidence does not relate to the applicant's father's physical presence in the United States. Moreover, the social security earnings statement, however, indicates that the applicant's grandfather earned approximately \$792 in 1965, \$737 in 1967, \$1524 in 1968, and \$1300 in 1969. The earnings statement suggests therefore that the applicant's grandfather did not spend a significant amount of time in the United States during those years. The record suggests that the applicant's paternal aunts may have been residing in the United States, but the evidence does not corroborate the applicant's claim regarding his father's presence. The record does not demonstrate that the applicant's father was present in the United States for ten years prior to 1979. The applicant therefore did not acquire U.S. citizenship under former section 301(a)(7) 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.