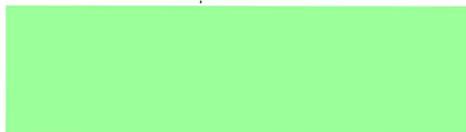


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U.S. Citizenship
and Immigration
Services



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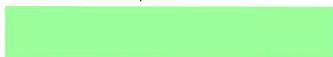
Office: DENVER, CO

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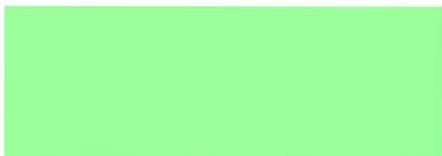
Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to Former Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7)(1977)

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

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Denver, Colorado, 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 parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1968. The applicant's mother was born in Mexico on [REDACTED] but the applicant claims that she acquired U.S. citizenship through her mother, the applicant's grandmother. 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 demonstrate that his mother acquired U.S. citizenship through her mother, or that she had the required physical presence in the United States.

On appeal, the applicant, through counsel, maintains that the applicant's mother acquired U.S. citizenship at birth and that she was physically present in the United States for the statutorily required period of time prior to the applicant's birth.

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 1977. Former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), is applicable to his case.¹

Former section 301(a)(7) of the Act provided, in relevant part, that

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

Thus, in order to establish that he acquired U.S. citizenship at birth through his mother, the applicant must demonstrate that she was physically present in the United States for ten years prior to his birth [REDACTED], five of which were after 1960 (her fourteenth birthday).

¹ 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.

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At the outset, however, the AAO must determine whether the applicant's mother was a U.S. citizen. The applicant's mother was born in 1946. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), was in effect at the time and is therefore applicable to the applicant's mother citizenship claim.

Section 201(g) of the Nationality Act provided, in relevant 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 for the applicant's mother to have acquired U.S. citizenship at birth, her mother (the applicant's grandmother) must have resided in the United States for 10 years prior to 1946, five of which were after the age of 16 (after 1932).

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 applicant claims that his grandmother, [REDACTED] was born in Colorado on [REDACTED]. The AAO notes, however, several relevant discrepancies with regard to the applicant's grandmother's identity and birth. First, as noted by the director, the applicant's grandmother's name is listed as [REDACTED] in her birth certificate but appears as [REDACTED] in the applicant's mother's birth certificate. The applicant's grandmother's delayed birth certificate was issued over 40 years after her birth, and on the basis of testimony by an uncle who had no personal knowledge of the birth. Additionally, the applicant's mother's birth certificate indicates that the applicant's grandmother was 27 in [REDACTED] (when the applicant's mother was born). The applicant's grandmother's birth therefore was in [REDACTED] and not [REDACTED]. In view of these discrepancies, the AAO cannot find that the applicant's grandmother's birth in the United States has been established. In addition, the record lacks sufficient evidence of her residence in the United States prior to [REDACTED]. In this regard, the only relevant documentary evidence is her school records indicating that she was in the United States in [REDACTED]. Thus, the applicant has not established that his mother acquired U.S. citizenship at birth through her mother.

Counsel claims that the applicant's mother's U.S. citizenship has been established by virtue of the approval of her brother's citizenship application. The applicant's uncle's file and any evidence used to establish his claim is not before the AAO. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International,*

19 I&N Dec. 593, 597 (Comm'r 1988). Furthermore, the AAO's authority over field offices or service centers is comparable to the relationship between a court of appeals and a district court. Even if a field office or service center director had approved a similar application, the AAO would not be bound to follow it. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO notes also that former section 301(b) of the Act, 8 U.S.C. § 1401(b), provided that a child who acquired citizenship at birth abroad pursuant to section 301(a)(7) of the Act must be continuously physically present in the United States for a period of five years between the ages of fourteen and twenty eight in order to retain his or her U.S. citizenship. Former section 301(c) of the Act, 8 U.S.C. § 1401(c), "applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did not later comply with, the retention requirements of section 201(g) or (h) of the Nationality Act." See 7 FAM 1133.5-2(c). A two-year retention requirement was later substituted retroactively in 1972. See 7 FAM 1133.5-7. Public Law 95-432, effective October 10, 1978, subsequently repealed section 301(b) of the Act, and eliminated completely the physical presence requirement for retention of U.S. citizenship. See 7 FAM 1133.2-2(d). However, the "[c]hange was prospective in nature. It did not reinstate as citizens those who had ceased to be citizens by the operation of section 301(b) as previously in effect." *Id.* Thus, "[p]ersons who were subject to section 301(b) and reached age 26 before October 10, 1978, without entering the United States to begin compliance with the retention requirements lost their citizenship on their 26th birthday. See 7 FAM 1133.5-13(a) and (c).

The applicant's mother was over 26 on [REDACTED]. The applicant states in his affidavit that his mother was physically present in the United States between 1951 and 1952, during at least two summers before 1960, every summer between 1960 and 1964, and after high school between 1964 and 1968, and half the time between 1969 and 1977. Although his brother and maternal aunt corroborate this claim in their respective affidavits, there is insufficient documentary evidence in the record in this regard except for a money order issued to the applicant's mother in 1963 and a letter from [REDACTED] stating generally that the applicant's grandmother and mother were in the United States between 1966 and 1968. The money order does not indicate that the applicant's mother was in the United States at the time. The letter from [REDACTED] states that the applicant's mother "occasionally worked" as a domestic at her home and "resided there for a short time." Thus, the record does not indicate, by a preponderance of the evidence, that the applicant's mother resided in the United States for two years before 1978 such that she could retain any claimed U.S. citizenship acquired through her own mother. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). It follows that that the applicant's mother also cannot establish that she was physically present in the United States for ten years prior to 1977, such that the applicant could acquire U.S. citizenship at birth through her.

"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. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. 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.