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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 19 2013 Office: HOUSTON, 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 (1986)

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, Houston, 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 in Mexico to and The applicant's parents were married in Mexico in 1978. The applicant's father was born in Mexico on but claims to have acquired U.S. citizenship at birth through his U.S. citizen mother. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C.§ 1401(g)(1986).

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(g) of the Act. The director further found that the applicant did not acquire U.S. citizenship upon his father's naturalization pursuant to section 320 of the Act, 8 U.S.C. § 1431 because the applicant was over the age of eighteen when his father naturalized.

On appeal, the applicant, through counsel, states that the director erred in considering his claim under section 320 of the Act because his father acquired U.S. citizenship at birth, and not through naturalization. *See* Appeal Brief. The applicant maintains he acquired U.S. citizenship through his father pursuant to section 301(g) of the Act. *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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1986. Former section 301(g) of the Act, as in effect prior to enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, therefore applies to the present case.[1]

Former section 301(g) 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 …

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[1] Former section 301(a)(7) 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 the provision, however, remained the same until November 1986.

The applicant maintains that his father acquired U.S. citizenship at birth through his mother, the applicant's grandmother. The record does not contain a certificate of citizenship or other definitive indication of the applicant's father's U.S. citizenship. Even if the applicant's father acquired U.S. citizenship at birth as claimed, however, the applicant did not derive U.S. citizenship through him because the record lacks the required evidence of his father's physical presence in the United States. The applicant must establish that his father was physically present in the United States for 10 years prior to 1986, five of which were after 1964. The only evidence related to the applicant's father's physical presence in the United States is his criminal record and a statement (indicating arrests in 1978, 1979, 1981, 1983 and 1984); a notarized statement from the applicant's aunt stating, in relevant part, that the applicant's father lost his documents and is one of six siblings; a notarized statement from the applicant's father's cousin indicating that the applicant's father was in the United States from 1966 to 1968; and evidence of the applicant's uncle's U.S. citizenship. The evidence submitted does not establish that the applicant's father was physically present in the United States for 10 years prior to 1986, five of which were after 1964.

The applicant does not contest the director's finding regarding his ineligibility for U.S. citizenship under section 320 of the Act.[2] The AAO notes that the applicant was over the age of eighteen on October 31, 2003, when his father's naturalization certificate was issued. Thus, the applicant could not establish that he acquired U.S. citizenship under section 320 of the Act.

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(g) of the Act or that he otherwise acquired U.S. citizenship under any other provision of law. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

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[2] Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), provides:

> A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.