



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 30 2013

Office: EL PASO, TX

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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)(1956)

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 Rosenbly
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, 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 parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1943. The applicant's father was born in Texas on [REDACTED]. He served in the U.S. Navy and was honorably discharged on [REDACTED]. The applicant's mother was not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he lacked jurisdiction to adjudicate the application because the applicant was residing overseas. The director, citing *inter alia* 22 C.F.R. § 50.2, noted that a citizenship claim made by an individual residing abroad is only properly made before the U.S. Department of State through a consular officer.

On appeal, the applicant, who is now in the United States, maintains that he acquired U.S. citizenship at birth through his father.

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 1956. 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 father, the applicant must demonstrate that his father was physically present in the United States for ten years prior to his birth (in 1956), five of which were after 1937 (the applicant's father's 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.

The record contains, in relevant part, the following documents: the applicant's birth certificate, the applicant's father's birth certificate, the applicant's parents' marriage certificate, the applicant's father's Notice of Separation from the U.S. Navy indicating his service between May and November 1945, and a letter from the [REDACTED] School District indicating that the applicant's father was enrolled in school there from 1930 to 1933. The record also contains documents relating to the applicant's grandparents and other relatives. These documents do not relate to the applicant's father's physical presence or the time period in question. *See e.g.* applicant's grandparents' marriage certificate (predating the applicant's father's birth). As previously noted, the applicant must establish that his father was physically present in the United States for 10 years prior to 1956, five of which were after 1937. The record does not, by a preponderance of the evidence, support the applicant's claim as there is no evidence that his father was physically present in the United States other than at birth, between 1930 and 1933, and in 1945. 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)). The applicant cannot establish, by a preponderance of the evidence, that his father was physically present in the United States for ten years prior to 1956, such that the applicant could acquire U.S. citizenship at birth through him.

"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.