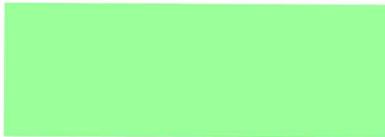
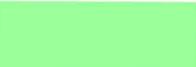


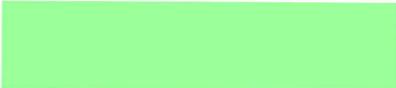


U.S. Citizenship  
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Services

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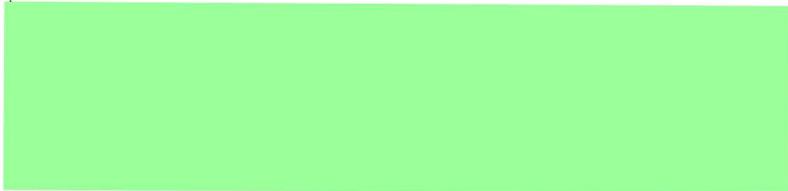


Date: **AUG 06 2013** Office: HOUSTON, TX FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1975).

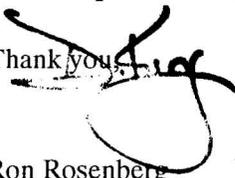
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you, 

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Houston, 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 July 1, 1975 in Mexico. The applicant's mother, [REDACTED] was born in [REDACTED] and became a U.S. citizen upon her naturalization in 1988. The applicant claims that his mother had acquired U.S. citizenship at birth through her U.S. citizen parent, [REDACTED] who was born in Texas on [REDACTED]. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1975).<sup>1</sup>

The field office director denied the applicant's Application for Certificate of Citizenship (Form N-600). See Decision of the Field Office Director dated April 2, 2013. On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth through his mother who, in turn, acquired U.S. citizenship at birth through her mother, the applicant's maternal grandmother. See Counsel's Statement Accompanying Form I-290B, Notice of Appeal or Motion.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1975. 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 . . . .

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 mother was physically present in the United States for 10 years prior to 1975, five of which were after her fourteenth birthday (after 1960).

The record contains, in relevant part, the applicant's mother's school records indicating her enrollment between 1957 and 1964, the applicant's parents' marriage certificate issued in Texas

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<sup>1</sup> 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 1969, the applicant's brother's 1970 Texas birth certificate. These documents establish, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for 10 years prior to 1975, five of which were after the age of 14.

The question remains, however, whether the applicant's mother was a U.S. citizen at birth. The applicant's mother was born in Mexico on January 31, 1946. The applicant's maternal grandmother was born in Texas on August 21, 1915. The applicant's maternal grandparents were married in 1961. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), applies to citizenship claims of persons born in wedlock in 1946.

Section 201(g) of the Nationality Act of 1940 states in pertinent 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.

Under section 201(g) of the Nationality Act, the applicant is required to establish that his grandmother "resided" in the United States. There is evidence in the record, including the applicant's grandmother's birth certificate and her son's 1930 birth index and death certificate, of the applicant's grandmother's physical presence in the United States prior to 1946, but the evidence does not demonstrate that she "resided" in the United States as was statutorily required. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) defines the term, "residence" as, "[t]he place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The record does not, by a preponderance of the evidence, establish that that the applicant's grandmother resided in the United States prior to 1946. Thus, the applicant cannot demonstrate that his mother acquired U.S. citizenship at birth pursuant to either section 201 or section 205 of the Nationality Act.

Because the applicant has failed to establish that his mother was a U.S. citizen at the time of his birth, he cannot demonstrate that he acquired U.S. citizenship at birth through her under former section 301 of the Act, or any other provision of law.<sup>2</sup>

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> Former section 321 of the Act, 8 U.S.C. § 1432, allowed for derivation of U.S. citizenship upon the naturalization of both parents (except in circumstances not applicable here). Although former section 321 of the Act was repealed, it is applicable to individuals who were under the age of 18 as of February 27, 2001. The applicant did not derive U.S. citizenship under this provision because only his mother naturalized.