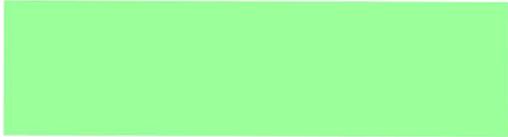




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 05 2013 Office: MIAMI, FL

FILE:

IN RE: Applicant:

APPLICATION: Application for a Certificate of Citizenship under former Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7)(1960).

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

(b)(6)

DISCUSSION: The application was denied by the Field Office Director, Miami, Florida, 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 28, 1960 in Venezuela. The applicant's parents, [REDACTED] and [REDACTED] were married in 1957. The applicant's mother was born in Venezuela on June 13, 1936, but acquired U.S. citizenship at birth through her U.S. citizen parent. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1960).¹

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

On appeal, the applicant, through counsel, maintains that she acquired U.S. citizenship through her mother. See Addendum A attached to Form I-290B, Notice of Appeal. The applicant further claims that she was admitted to the United States as a lawful permanent resident and therefore acquired U.S. citizenship pursuant to the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). *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 1960. Former section 301(a)(7) of the Act therefore applies to the present case.

The applicant claims eligibility for U.S. citizenship pursuant to the CCA, *supra*. The CCA amended or repealed the derivative citizenship provisions in sections 320, 321 and 322 of the Act. The CCA, however, took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. The applicant's eighteenth birthday was in 1978. Because the applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant is also ineligible for a certificate of citizenship under the derivative citizenship provisions of the Act as in effect prior to the CCA because her mother acquired U.S. citizenship at birth, and not through naturalization.² Thus, the applicant's citizenship claim rises only under section 301 of the Act.

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.

² The applicant also fails to qualify for U.S. citizenship under former section 322 of the Act because, whether or not an applicant satisfied the requirements set forth in former section 322(a) of the Act, she is required to

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.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that her mother was physically present in the United States for 10 years prior to 1960, five of which were after her fourteenth birthday (after 1950).

The evidence in the record suggests that the applicant's mother was physically present in the United States only after the applicant's birth. *See e.g.* Statement of the Applicant's Father, [REDACTED]. The applicant therefore did not establish that her mother was physically present in the United States as is statutorily required and thus 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.

establish that her application for citizenship was approved, and that she took the oath of allegiance, prior to her eighteenth birthday.