(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: JUL 23 2013 Office: HARLINGEN, TX FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1961).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 (the director), Harlingen, 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 in Mexico. The applicant's mother, was born on . The applicant's father, is not a U.S. citizen. The applicant's parents were married in Mexico on August 28, 1937. 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)(1961).[1]

The director denied the applicant's Application for Certificate of Citizenship (Form N-600). *See* Decision of the Field Office Director dated December 6, 2012. The director determined that the evidence in the record did not establish that the applicant's mother was physically present in the United States for five years after the age of 14, as required by former section 301(a)(7) of the act.

On appeal, the applicant maintains that her mother was physically present as is statutorily required. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant explains that the discrepancies in her uncle's statements were due to his confusion and have been corrected. *Id.* Also, she states that her grandparents were born and lived in Texas until 1930. *Id.* Lastly, she states that her siblings' births in Mexico do not demonstrate that her mother was not physically present in the United States. *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 1961. 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 . . . .

---

[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.

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 1961, five of which were after her fourteenth birthday (after 1935).

The record contains, in relevant part, the applicant's mother's birth and baptismal certificates, the applicant's siblings' birth certificates, sworn statements by the applicant's uncle, the applicant's grandmother's birth and baptismal certificates, the applicant's parents' marriage certificate, and the applicant's brother's statement. These documents do not establish, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for 10 years prior to 1961, five of which were after 1935.

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.)

As noted in the director's decision, there are important discrepancies between the statements submitted by the applicant's uncle. His first statement indicates that the applicant's mother was present in the United States until 1928, whereas his second and third statements indicate that she remained in the United States until 1931. The applicant's mother's younger siblings were born in Texas in 1924 and 1928, respectively. The applicant's uncle states that the applicant's mother returned to the United States in 1935. The applicant's brother, however, indicates that his mother was in the United States until 1931 and then returned when he was three years old (in 1947). The applicant's brother explains that his mother traveled back and forth from Brownsville to Mexico, but was physically present in the United States even though her children were born in Mexico. His statement, however, does not contain any of the relevant dates, and is not based on personal knowledge, or is based on events occurring when he was a young child. There is no documentary evidence in the record to corroborate that the applicant's mother was physically present as claimed. Therefore, there is good reason to reject the applicant's contention that his mother was physically present as is statutorily required.

Even if the record sufficiently demonstrates that the applicant's mother was physically present in the United States for 10 years prior to 1961, it does not establish that she was physically present in the United States for five years between October 1935 (her fourteenth birthday) and November 1961 (the applicant's birth). In this regard, the record indicates that the applicant's parents were married in Mexico in 1937 and that the applicant's older siblings were born in Mexico. The applicant's brother's statement indicates that his mother returned to the United States in 1947. The applicant's uncle states that she returned in 1935, but his statements regarding his employment and the applicant's mother's residence in the late 1930s are contradictory. In his latest sworn statement, the applicant's uncle indicates that the applicant's mother worked with him in Texas from 1939 to 1941 and from 1949 to 1951. The employment periods indicated in his statement do not amount to five years. The record does not establish, by

a preponderance of the evidence, that the applicant's mother was physically present in the United States for at least five years after the age of 14, prior to the applicant's birth in 1961.

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.