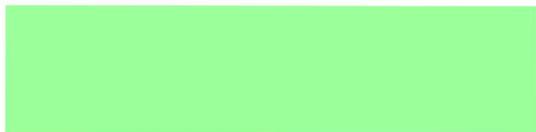




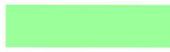
U.S. Citizenship  
and Immigration  
Services

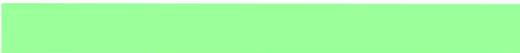
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Date: JUN 18 2013

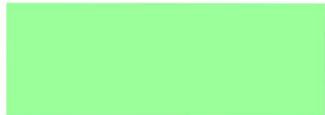
Office: HARLINGEN, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1967).

ON BEHALF OF APPLICANT:

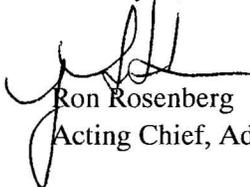


INSTRUCTIONS:

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, 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 October 20, 1967 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were married in Mexico in 1965. The applicant claims that his father was born in Texas on July 2, 1938. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1967).<sup>1</sup>

The field office director denied the applicant's citizenship claim upon finding that the applicant's father was born in Mexico and was not a U.S. citizen.<sup>2</sup> On appeal, the applicant, through counsel, maintains that his father was born in Texas. The appeal is accompanied by a certificate, issued on October 9, 2012 by the Civil Registrar of [REDACTED] Mexico, stating that a birth certificate for the applicant's father, "born on July 02, 1938," was not found in her search of records for the years 1938 through 1943.

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 1967. 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: *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.

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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.

<sup>2</sup> The director noted that the applicant had previously filed applications for certificate of citizenship, all of which were denied. The director properly deemed the applicant's instant application as a motion to reopen under the regulations at 8 C.F.R. § 341.6.

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At the outset, the applicant must establish that his father was a U.S. citizen at the time of his birth. The applicant states that his father was born in Texas on July 2, 1938. The record contains a copy of the applicant's father's baptismal certificate and U.S. passport card. Nevertheless, the record also contains a copy of a birth certificate No. 00128, filed on July 27, 1938 in [REDACTED] relating to an [REDACTED] born on July 10, 1938 in [REDACTED]

The AAO notes that the applicant has submitted a certificate from the civil registrar in [REDACTED] stating that no birth certificate is on file relating to the applicant's father. The AAO further notes, however, that the civil registrar certificate specifically states that there are no digital search mechanisms and that the registrar is not responsible for records that may exist outside the jurisdiction or dates provided. It is noted that the applicant's father's birth certificate, as stated by the applicant and in the civil registrar search certificate, is July 2, 1938. The Mexican birth certificate in the record states that the applicant's father was born on July 10, 1938, not July 2, 1938. The Mexican birth certificate was filed on July 27, 1938. The applicant's father's U.S. birth certificate was filed in 1957.

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.)

In view of the contemporaneous nature of the Mexican birth certificate relating to the applicant's father, the AAO must find that the applicant has failed to establish, by a preponderance of the evidence, that his father is a U.S. citizen.<sup>3</sup> He therefore cannot establish that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Act, or any other provision of law.

“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.

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<sup>3</sup> The AAO further notes that the record does not contain sufficient evidence to establish that the applicant's father, even if he could demonstrate his U.S. citizenship, was physically present in the United States for 10 years prior to 1967 as is statutorily required.