



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **JUN 21 2013** Office: HARLINGEN, TX

[Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1976)

ON BEHALF OF APPLICANT:

[Redacted]

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 26, 1976 in Mexico to [REDACTED]. The applicant's parents were married in Mexico in 1973. The applicant's mother was born in Mexico on March 18, 1957, but acquired U.S. citizenship through her U.S. citizen mother. 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)(1976).

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his mother was physically present in the United States for the period of time required by former section 301(a)(7) of the Act.

On appeal, the applicant, through counsel, states that the applicant's mother had the required physical presence in the United States. *See* Appeal Brief. Specifically, counsel maintains that there is sufficient evidence to establish that the applicant's mother was present in the United States since 1963. *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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1976. Former section 301(a)(7) of the Act therefore applies to the present case.<sup>1</sup>

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> 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 applicant must therefore establish that his mother was physically present in the United States for 10 years prior to 1976, five of which were after the age of 14 (after 1971).

The record contains a number of affidavits in support of the applicant's claim that his mother was physically present in the United States for the statutorily required period. On appeal, counsel maintains that the affidavits submitted provide sufficient evidence of the applicant's mother's presence in the United States since 1963. 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 field office director's decision, there are important discrepancies between the testimony and information given by the applicant's relatives in previous proceedings, and the affidavits submitted in support of the instant application. Additionally, there is no documentary evidence in the record to corroborate the applicant's claim. Lastly, some of the affidavits are executed by individuals without personal knowledge of the applicant's mother's residence during the relevant time. Therefore there is good reason to reject the applicant's contention that his mother was present in the United States as early as 1963. The evidence suggests that the applicant's mother was physically present in the United States, but not as early as 1963. Thus, the applicant cannot establish that his mother was physically present in the United States for 10 years prior to his birth in 1976.

Additionally, there is insufficient evidence to establish that the applicant's mother was physically present in the United States for five years between March 1971 (her fourteenth birthday) and November 1976 (the applicant's birth). In this regard, the record indicates that the applicant's parents were married in Mexico in 1973. The applicant's older sibling was born in Mexico in 1975. The record does not include evidence to establish that the applicant's mother was physically present for at least five years after the age of 14.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet his burden of proof to establish that his mother was physically present in the United States as required by former section 301(a)(7) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.