



U.S. Citizenship  
and Immigration  
Services

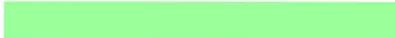
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Date: **MAR 12 2013**

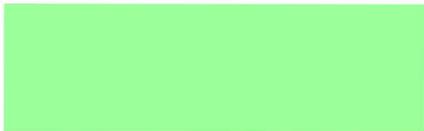
Office: HARLINGEN, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.(1957).

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 [REDACTED] in Mexico. The applicant's mother was born in Mexico on [REDACTED] but acquired U.S. citizenship at birth through her U.S. citizen parent. The applicant's late father was not a U.S. citizen. 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)(1957).<sup>1</sup>

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

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth and indicates that additional evidence of the applicant's mother's physical presence in the United States would be provided. To date, seven months after the filing of the appeal, no additional evidence has been received. The applicant's case will be adjudicated on the basis of the evidence currently before the AAO.

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 1957. 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.

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 1957, five of which were after her fourteenth birthday (after 1942).

The record contains, in relevant part, the applicant's mother's birth and citizenship certificates, the applicant's birth certificate, the applicant's father's death certificate, and affidavits from the applicant's mother and from [REDACTED]. The applicant's mother states in her affidavit that she lived in the United States with her father since the age of "approximately eight." [REDACTED] states in his affidavit that he met the applicant's grandfather in 1944 and that he had with him a "young lady" named [REDACTED] presumably the applicant's mother. [REDACTED] further states, however, that the applicant's grandfather had children in Mexico.

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.)

The affidavits submitted by the applicant do not support his claim that his mother was in the United States since 1928. First, the AAO notes that the applicant's mother is an interested witness and that hers, and [REDACTED] affidavit, are not corroborated by any documentary evidence. The applicant's mother did not obtain evidence of her U.S. citizenship until 1972. She was married in Mexico in 1953, and had all eight of her children in Mexico between 1954 and 1970. The applicant's mother indicated in her citizenship application that she was residing in Mexico. This evidence plainly contradicts the applicant's mother's affidavit. The record does not demonstrate that the applicant's mother was present in the United States for ten years prior to 1957, five of which were after 1942. The applicant therefore 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.