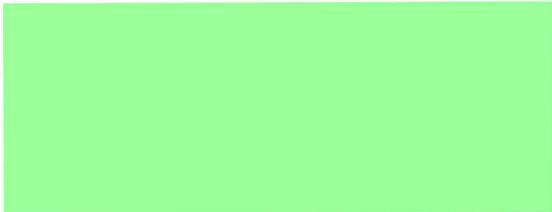




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

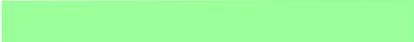


Date: **MAY 14 2013**

Office: New Orleans

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1972)

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.

Thank you

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the New Orleans Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on January 3, 1972 in Mexico to [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1958. The applicant's mother was born in Mexico on May 21, 1941, but acquired U.S. citizenship through her U.S. citizen parent. 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)(1972).

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 secondary evidence to establish that the applicant's mother was present in the United States for more than 10 years prior to 1972. *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 1972. 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.

The applicant must therefore establish that his mother was physically present in the United States for 10 years prior to 1972, five of which were after the age of 14 (after 1954).

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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 maintains that his mother was physically present in the United States, in relevant part, from 1952 to 1967 and after 1974. The record contains several affidavits in support of the applicant's claim. The affidavits are detailed and consistent in stating that the applicant's mother's family moved to the United States from Mexico in 1952 and that she remained in the United States until 1967. In 1967, she returned to Mexico with her children until 1974. The record indicates that the applicant's older siblings were born in Mexico, some during the period of time when his mother was residing in the United States. The affidavits explain that the applicant's mother only returned to Mexico to give birth and returned shortly thereafter to the United States. The record contains the social security earnings statement relating to the applicant's uncle, [REDACTED], listing his employment in the United States and corroborating his claim that he was residing in the United States. The applicant's mother was residing with him during some of this time. The record also contains a subpoena issued in Texas to the applicant's mother in 1964 as well the applicant's brother's baptismal certificate indicating that he was baptized in Texas in 1964.

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 AAO notes that the affidavits submitted by the applicant do not contain any significant discrepancies. They consistently state that the applicant's mother was present in the United States, in relevant part, from 1952 to 1967. The documentary evidence, albeit limited, corroborates the statements made by the applicant's relatives in their affidavits. Therefore there is no good reason to reject the applicant's contention that his mother was present in the United States from 1952 to 1967, a period of more than 10 years prior to the applicant's birth in 1972. Thus, the applicant has established that his mother was physically present in the United States for the statutorily required period of time.

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 met his burden of proof to establish that his father was physically present in the United States as required by former section 301(a)(7) of the Act. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.