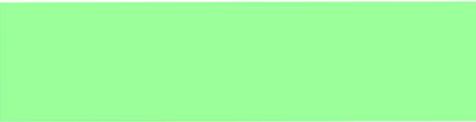


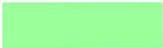


**U.S. Citizenship  
and Immigration  
Services**

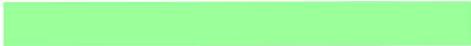
(b)(6)



Date: Office: LOS ANGELES, CA

FILE: 

**MAY 17 2013**  
IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409 (1967).

ON BEHALF OF APPLICANT:

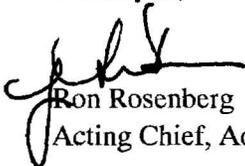


**INSTRUCTIONS:**

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be sustained.

The record reflects that the applicant was born on August 29, 1967 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father was born in Mexico on June 7, 1915, but became a U.S. citizen upon his naturalization on July 26, 1946. The applicant's parents were married in 1959, and divorced in 1968. The applicant's mother subsequently married [REDACTED]. The applicant's step-father adopted him on July 22, 1983. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his natural father.

The field office director denied the applicant's citizenship claim upon finding that he was statutorily precluded from deriving U.S. citizenship through his natural father because he was adopted. *See Decision of the Field Office Director* (citing section 101(b)(1)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(E)(i)).

On appeal, the applicant, through counsel, maintains that his U.S. citizenship was acquired at birth and is not "cut off" upon his adoption. *See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion; see also Appeal Brief.*

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, 8 U.S.C. § 1401(a)(7), is therefore applicable to his 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> The applicant, through counsel, mistakenly indicated that he was filing a motion to reopen and reconsider when the Form I-290B, Notice of Appeal or Motion, was originally filed in 2007. On November 19, 2012, the Los Angeles USCIS Field Office forwarded the matter to the AAO for consideration as an appeal.

The applicant's natural father became a U.S. citizen upon his naturalization in 1946, prior to the applicant's birth in 1967. The record establishes that the applicant's natural father was physically present in the United States for at least 10 years prior to 1967, five of which were after 1929 (his fourteenth birthday). In this regard, the record contains, in relevant part, a consular officer affidavit executed in 1968, the information provided in the applicant's father's naturalization application, the applicant's father's previous marriage certificate dated in 1936, information relating to the birth of seven of his children in the United States between 1938 and 1945 and evidence of the applicant's father's honorable service in the U.S. Army. The AAO therefore concludes that the applicant acquired U.S. citizenship at birth pursuant to former section 301(a)(7) of the Act.

The Field Office Director, citing section 101(b)(1)(E)(i) of the Act, concluded that the applicant's subsequent adoption in 1983 precluded his ability to derive U.S. citizenship through his natural father. Section 101(b)(1)(E) of the Act defines a "child" to include:

a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That *no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.*

(Emphasis added). This section of the Act, however, only precludes a natural parent from deriving any immigration benefit from a child after the child is adopted (and the natural parent's rights are terminated). The applicant's father is deceased; he is not seeking to be accorded any immigration benefit. *Cf. Young v. Reno*, 114 F.3d 879, 883 (9th Cir. 1997) (where adopted child sought to confer immigration benefits to natural siblings). The definition of "child" in section 101(b)(1)(E)(i) of the Act is not relevant in the applicant's case, where it is the applicant acquiring U.S. citizenship through his natural father at birth, and prior to his adoption. The applicant's adoption does not divest him of the U.S. citizenship he acquired at birth. *See Afroyim v. Rusk*, 387 U.S. 253 (1967) (holding that, absent fraud, U.S. citizenship cannot be involuntarily relinquished).

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. The appeal will therefore be sustained. The matter will be returned to the Los Angeles USCIS Field Office for issuance of a certificate of citizenship.

**ORDER:** The appeal is sustained. The matter is returned to the Los Angeles USCIS Field Office for issuance of a certificate of citizenship.