



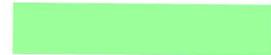
U.S. Citizenship
and Immigration
Services

(b)(6)



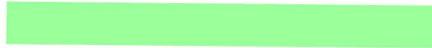
Date: **NOV 18 2013**

Office: HOUSTON, TX



IN RE:

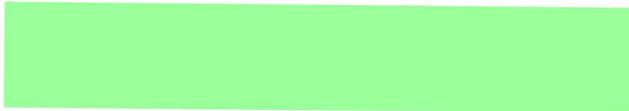
Applicant:



APPLICATION:

Application for a Certificate of Citizenship under former Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1970).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, Texas (the director), and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was initially rejected as untimely filed. The matter will be reopened *sua sponte*, the appeal will be dismissed.

The record reflects that the applicant was born on August 18, 1970 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's mother was born in Mexico on February 24, 1936, but acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico on September 28, 1958. 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)(1970).¹

The director denied the applicant's Application for Certificate of Citizenship (Form N-600). *See* Decision of the Field Office Director dated August 16, 2012. The director determined that the evidence in the record did not establish that the applicant's mother was physically present in the United States as required by former section 301(a)(7) of the Act. The director noted that the applicant's mother had previously claimed she had not resided in the United States prior to 1971.

On appeal, through counsel, the applicant maintains that his mother was physically present as is statutorily required. *See* Letter Brief Accompanying Appeal. Counsel requests an opportunity to review the applicants' mother's Form N-600, Application for Certificate of Citizenship and Form I-130, Petition for Alien Relative. *Id.* Counsel asserts that the photographs submitted as well as the applicant's mother's and friends' sworn statements establish that she was physically present in the United States between 1942 and 1958. *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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1970. 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

¹ 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.

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less than ten years, at least five of which were after attaining the age of fourteen years

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 1970, five of which were after her fourteenth birthday (after 1950).

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 record contains, in relevant part, the applicant's mother's certificate of citizenship, the applicant's grandmother's baptismal and death certificates, the applicant's parents' marriage certificate, the applicant's birth certificate, the applicant's mother's and friends' sworn statements indicating that she was present in the United States from 1942 to 1958, and several photographs.

As noted in the director's decision, the applicant's mother's citizenship certificate (issued in 1971) and marriage certificate (issued in 1958) indicate that she was residing in Mexico at the time. The statements submitted by the applicant's mother and friends indicate that she was present in the United States from 1942 to 1958. The photographs and nearly identical statements, without more, do not establish that the applicant's mother was present in the United States between 1942 and 1958. There is no documentary evidence in the record to corroborate that the applicant's mother was physically present in the United States as claimed.

attests to the applicant's mother's residence, but she was born in 1941 and was a young child herself between 1942 and 1958. who was born in 1946, attests to the applicant's mother's residence between 1946 and 1958. The applicant's claim must be rejected in view of the age of the witnesses at the time, their self-interest, and the availability of more contemporaneous information that suggests the applicant's mother resided in Mexico until she obtained her citizenship certificate. Thus, there is good reason to reject the applicant's contention that his mother was physically present in the United States between 1942 and 1958.

The record does not establish, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for ten years prior to 1970, at least five of which were after the age of 14.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.