



U.S. Citizenship  
and Immigration  
Services

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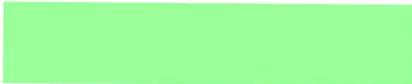


Date: **OCT 21 2013**

Office: SAN ANTONIO, 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 (1964).

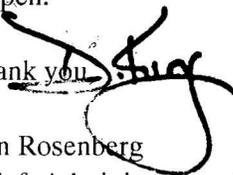
ON BEHALF OF APPLICANT:



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  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, San Antonio, 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 December 27, 1964 in Mexico. The applicant's father, [REDACTED] was born in Mexico on May 27, 1935, but acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant's mother naturalized after the applicant's eighteenth birthday. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1964).<sup>1</sup>

The field office director, noting many inconsistencies in the evidence provided, found that the applicant had failed to demonstrate that his father was physically present in the United States for the statutorily required period of time. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he provided sufficient evidence of his father's physical presence in the United States. *See* Appeal Brief. The applicant states that the affidavits and testimony provided establish that his father was physically present in the United States for at least 10 years prior to 1964. *Id.* The applicant attributes any inconsistencies in the testimonial evidence to his father's and aunt's old age. *Id.* The applicant also indicates that his father may have considered his residence to be in Mexico, even when he was physically present in the United States. *Id.* He further explains that corroborating documentary evidence cannot be obtained. *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 1964. 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

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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.

the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

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 father was physically present in the United States for ten years prior to 1964, five of which were after his fourteenth birthday (after 1949).

Physical presence in the United States "means actual bodily presence," or actual time spent in the United States. 7 Foreign Affairs Manual (FAM) 1133.3-4(a)(1). Absences from the United States, no matter how short, are not counted toward the physical presence requirement. *Id.*

The record contains, in relevant part, the applicant's father's birth and citizenship certificates, the applicant's birth certificate, and affidavits and court testimony by the applicant's parents and aunt, Ms. [REDACTED]

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 detail in the director's decision, the testimonial evidence and affidavits submitted by the applicant contain many important discrepancies and do not support the applicant's claim that his father was in the United States for ten years prior to 1964. Although the applicant's father claims to have been present in the United States for at least ten years prior to 1964, his Social Security records lists wages starting only in 1966, two years after the applicant's birth. Further, his immigration file indicates that he was intercepted at the border numerous times in the 1950s and that he applied for a border crossing card in 1961. The evidence indicates that the applicant's father claimed at the time to be residing in Mexico. Also, the record contains a letter addressed to the applicant's father in Mexico. The applicant's parents and aunt are not disinterested witnesses, their testimony is not corroborated, and their statements conflict with more contemporaneous information and their own prior sworn testimony. The record simply does not demonstrate that the applicant's father was present in the United States for ten years prior to 1964, five of which were after 1949. The applicant therefore did not acquire U.S. citizenship under former section 301(a)(7) or any other provision of the Act.

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.