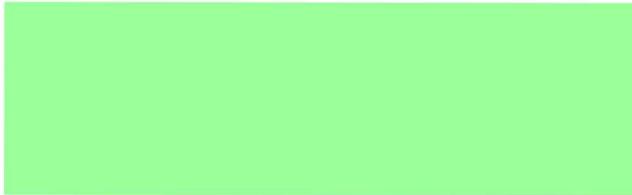




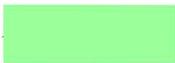
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 09 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 (1977).

ON BEHALF OF APPLICANT:

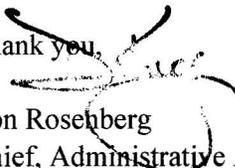


INSTRUCTIONS:

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 Rosehberg
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 March 30, 1977 in Mexico. The applicant's father was born in Texas on August 7, 1957. 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)(1977).¹

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

On appeal, the applicant, through counsel, maintains that his father's inability to recall the dates of his physical presence in the United States is due to dementia. *See* Appeal Brief. Alternatively, the applicant claims that it is unconstitutional to require him to establish that his father was physically present in the United States for 10 years, when the child of an unwed mother only needs to demonstrate one year of physical presence. *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 1977. Former section 301(a)(7) of the Act therefore applies to the present case. Because the applicant was born out of wedlock, he is also subject to the requirements of former section 309 of the Act, 8 U.S.C. § 1409. The applicant was legitimated as provided in former section 309(a) of the Act, and therefore fulfills those applicable requirements.

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

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.

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 10 years prior to 1977, five of which were after his fourteenth birthday (after 1971).

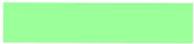
The record contains, in relevant part, the applicant's father's birth and baptismal certificates, the applicant's birth certificate, the applicant's parent's marriage certificate, photographs, and sworn statements and affidavits from the applicant's father, aunt, and mother. The testimonial and documentary evidence submitted indicates that the applicant's father traveled to Mexico as an infant and returned to the United States in 1969 or 1970. He met and married the applicant's mother in Mexico in 1973.

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 evidence submitted by the applicant does not support his claim that his father was physically in the United States between 1957 and 1969 for a period of time sufficient to establish that he was present in the United States for ten years prior to 1977. The applicant indicates that his father suffers from dementia and cannot recall important details. Even if the discrepancies in the applicant's father's testimony could be excused by his age or medical condition, the applicant has not submitted other probative evidence to establish that his father was physically present in the United States for ten years prior to 1977. The record does not demonstrate that the applicant's father was present in the United States for ten years prior to 1977, five of which were after 1971. The applicant therefore did not acquire U.S. citizenship under former section 301(a)(7) or any other provision of the Act.

On appeal, counsel also asserts that that it is a violation of the applicant's constitutional due process to require him to establish that his father was physically present in the United States for ten years, when a child of an unwed mother would only be required to establish one year of physical presence under section 309(c) of the Act. Like the Board of Immigration Appeals, the AAO cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Even if we were to identify a constitutional infirmity in the statute, we lack the authority to remedy it. *Matter of Fuentes-Campos*, 21 I&N Dec. at 912. The AAO notes, in any event, that the Supreme Court has upheld as constitutional the different requirements for transmission of U.S. citizenship by unwed mothers and fathers. *See Nguyen v. INS*, 533 U.S. 53 (2001); *see also United States v. Flores-Villar*, 536 F.3d 990 (9th Cir. 2008) (holding that different residency



(b)(6)

NON-PRECEDENT DECISION

Page 4

requirements for transmission of U.S. citizenship by mothers and father is not unconstitutional), *aff'd*, 131 S. Ct. 2312 (2011).

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.