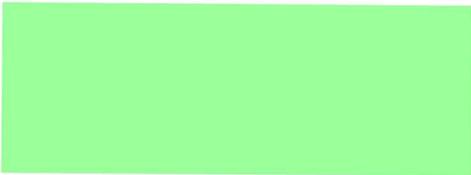


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090



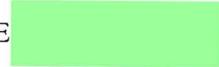
U.S. Citizenship  
and Immigration  
Services



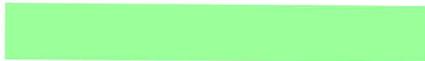
DATE: **APR 16 2014**

OFFICE: TAMPA, FL

FILE



IN RE:



APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1960)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Tampa, Florida Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600), a decision she affirmed on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

*Pertinent Facts and Procedural History*

The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother. In the director's last decision, dated November 15, 2013, she determined that the applicant had failed to establish that his mother was physically present in the United States for the requisite five years after she turned 14 years old, as required under former section 301(a)(7) of the Act. The Form N-600 was denied accordingly.

*Applicable Law*

The regulation provides at 8 C.F.R. § 103.3(a)(1)(iii)(B) that an *affected party* means "the party or entity with legal standing in a proceeding." An appeal filed by a person or entity not entitled to file the appeal must be rejected as improperly. See 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

In the present matter, the applicant's mother signed the applicant's Form I-290B notice of appeal. The applicant's mother is not an *affected party* in the applicant's case. She is therefore not entitled to file the Form I-290B, and the appeal must be rejected as improperly filed.

We note further that, even if the applicant's Form I-290B had been properly filed, the appeal would nevertheless have been dismissed based on the applicant's failure to establish that his mother had the required years of physical presence in the United States.

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 was born to married parents in Canada on September 17, 1960. His mother was born in Canada on September 22, 1940, and she acquired U.S. citizenship at birth. His father was born in Canada, and was not a U.S. citizen. Former section 301(a)(7) of the Act therefore applies to the applicant's U.S. citizenship claim.<sup>1</sup>

Former section 301(a)(7) of the Act provided that the following shall be citizens of the United States at birth:

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<sup>1</sup> Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) of the Act remained the same after the re-designation and until 1986.

[A] person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

To establish that his mother was physically present in the United States for 10 years prior to the applicant's birth on September 17, 1960, at least five years of which were after his mother turned 14 on September 22, 1954, the record contains academic and U.S. Social Security Administration records for the applicant's mother, affidavits from the applicant's mother and his maternal uncle, and photographs.

The academic records reflect that the applicant's mother attended school in [redacted] New Hampshire between September 4, 1946 and June 18, 1955; she resided with her parents in New Hampshire during that time; and she transferred to a private school in Canada after June 18, 1955.

The applicant's maternal uncle states in an affidavit dated August 21, 2012, that the applicant's mother lived with their mother in New Hampshire from October 1940 to September 1956; their mother enrolled her in a religious boarding school in [redacted] Canada in September 1955; between September 1955 and September 1959, the applicant's mother returned home to New Hampshire for major holidays and every summer; and after September 1959, the applicant's mother lived with her grandmother in Canada.

The applicant's mother states in an affidavit dated August 22, 2012, that she began living with her family in [redacted] New Hampshire when she was three weeks old; she attended elementary and junior high school in [redacted] New Hampshire, and after her father died in June 1955, her mother enrolled her in a religious boarding school in [redacted] Canada; she came home during holidays and summers until September 1959; and after September 1959, she decided to live in Toronto with her grandmother. The applicant's mother clarifies in a separate statement that she returned to New Hampshire to visit family during the following time periods:

- |                                 |                                 |
|---------------------------------|---------------------------------|
| 12/19/1955 - 1/5/1956 (17 days) | 12/19/1957 - 1/6/1958 (18 days) |
| 3/29/1956 - 9/4/1956 (8 days)   | 4/3/1958 - 4/11/1958 (8 days)   |
| 6/6/1956 - 9/4/1956 (90 days)   | 6/9/1958 - 9/4/1958 (87 days)   |
| 12/20/1956 - 1/4/1957 (15 days) | 12/18/1958 - 1/3/1959 (16 days) |
| 4/18/1957 - 4/25/1957 (7 days)  | 3/26/1959 - 4/3/1959 (8 days)   |
| 6/7/1957 - 9/5/1957 (90 days)   | 6/8/1959 - 9/9/1959 (93 days)   |

The record also contains Social Security Administration records for the applicant's mother and photographs. The Social Security Administration evidence reflects that the applicant's mother earned no income prior to the applicant's birth. The photographs fail to establish or demonstrate that the applicant's mother was physically present in the United States

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the cumulative evidence establishes that the applicant's mother was physically present in the United States for ten years prior to the applicant's birth. The evidence does not, however, establish that the applicant's mother was physically present in the United States for at least five years after she turned 14, on September 22, 1954, and prior to the applicant's birth on September 17, 1960.

The affidavit evidence and school records indicate, at best, that the applicant's mother was physically present in the United States for two to three years after her fourteenth birthday and prior to the applicant's birth. The social security information, which shows no information during the 1954 to 1960 years, provides no evidence of the applicant's mother's physical presence in the United States. The applicant's burden of proof has therefore not been met.

*Conclusion*

The applicant has failed to establish that his appeal was filed by a person or entity entitled to file the appeal. See 8 C.F.R. § 103.3(a)(2)(v)(A)(1) The appeal shall therefore be rejected as improperly filed.

**ORDER:** The appeal is rejected. The application remains denied.