U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 0 5 2014 Office: TAMPA, FL FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1971).

ON BEHALF OF APPLICANT:

[redacted]

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 Tampa, Florida Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

The applicant was born on January 13, 1971 in the Dominican Republic to [redacted] and [redacted] The applicant's mother acquired U.S. citizen at birth through her U.S. citizen father. The applicant's father is a national of the Dominican Republic. The applicant was admitted to the United States on a nonimmigrant B-2 tourist visa on August 23, 2010. 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(g) (1971), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen mother, and alternatively, that he derived U.S. citizenship through his mother pursuant to section 320 of the Act, 8 U.S.C. § 1431, as amended.

The director found that the applicant failed to establish that his U.S. citizen mother was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. The director also determined that the applicant failed to establish that he derived U.S. citizenship under section 320 of the Act, because there was no evidence that the applicant had been admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The application was denied accordingly. On appeal, the applicant, through counsel, submits additional evidence and asserts that the applicant's Form N-600 should be approved under former section 301(a)(7) of the Act and under current section 320 of the Act.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The applicant in this case was born in 1971. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.

Former section 301(a)(7) of the Act provides in pertinent part:[1]

[1] 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 the statute remained the same after the 1978 re-designation. The Immigration and Nationality Act Amendments of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986), enacted November 14, 1986, amended section 301(g), which now requires an applicant to establish that his or her U.S. citizen parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, rather than for ten years as previously required. Current section 301(g) of the Act is inapplicable here because it applies only to individuals born on or after the 1986 enactment date. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). The director's decision incorrectly sets

> The following shall be nationals and citizens of the United States at birth:
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> 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 . . . .

(Emphasis added).

The applicant also makes a claim of citizenship under the current version of section 320 of the Act. The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, repealed section 321 of the Act in its entirety and amended provisions of sections 320 and 322 of the Act. The CCA applies only to persons who were not yet eighteen years of age on February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The CCA, therefore, is not applicable in this case because the applicant was over the age of eighteen on its 2001 effective date. Accordingly, the applicant's claim shall be assessed only under former section 301(a)(7) of the Act.

Acquisition of Citizenship under Former Section 301(a)(7) of the Act

Former section 301(a)(7) of the Act allows for the acquisition of citizenship at birth by children born to U.S. citizens if certain qualifications are satisfied. The applicant here was born outside the United States to one U.S. citizen and one noncitizen parent, as required under this provision. His mother was born in the Dominican Republic but acquired U.S. citizenship at birth through her U.S. citizen father. At issue here is whether the applicant's U.S. citizen mother was physically present in the United States, prior to the applicant's birth, for the requisite period or periods under former section 301(a)(7) of the Act, totaling not less than ten years, at least five of which were after her fourteenth birthday on August 21, 1953.

The record before the AAO lacks any evidence of the applicant's mother's physical presence in the United States before the applicant's birth. In fact, counsel for the applicant concedes on brief that the physical presence requirement of former section 301(a)(7) of the Act cannot be satisfied because the applicant's mother did not enter the United States until she received her U.S. passport for the first time in 2007, at which time the applicant was already 36 years old. *See Counsel's Brief*, dated August 22, 2013. Counsel contends that the Department of State committed errors and took egregious action in not issuing a passport to the applicant's mother in 1988 when she first applied for one. Even if the Department of State had issued a passport to the applicant's mother in 1988 and she immediately began residing in the United States thereafter, the applicant would remain ineligible to derive citizenship from

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forth the most current version of section 301(g) of the Act. However, this error is not fatal, as the director's analysis shows that the application was properly considered under the requirements of former section 301(a)(7) of the Act.

his mother, as the plain reading of former section 301(a)(7) requires the years of physical presence in the United States to have occurred prior to the child's birth. In 1988, the applicant was seventeen years old and, therefore, any years of physical presence beginning after the applicant's birth would not count toward meeting the statutory requirements of former section 301(a)(7) of the Act.

On appeal, counsel asserts that United States Citizenship and Immigration Services' (USCIS) application of inconsistent standards to the applicant's acquisition claim is arbitrary and capricious and warrants the approval of the applicant's Form N-600. Specifically, counsel points to the two Requests for Evidence (RFE) of the applicant's mother's five years of physical presence, noting that only the second RFE, issued on February 16, 2013, required the physical presence to have been before the applicant's birth. Counsel further notes that the director, in her decision, then inconsistently required the applicant to have shown that that his mother had ten years of physical presence instead of five years.

Counsel's assertions on appeal do not demonstrate the applicant's statutory eligibility for U.S. citizenship. First, a plain reading of former section 301(a)(7) of the Act provides that the U.S. citizen parent's physical presence in the United States must occur prior to the applicant's birth, an eligibility element that would not have required clarification through the issuance of an RFE. Second, the applicant's mother was never physically present in the United States. Thus, the director's request for evidence to establish five or ten years of physical presence was irrelevant, because the applicant's mother could not meet either standard.

Accordingly, upon de novo review of the evidence, the applicant does not meet the requirements of former section 301(a)(7) of the Act to acquire citizenship at birth through his U.S. citizen mother under that provision.

Conclusion

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not met that burden to demonstrate that he acquired U.S. citizenship under former section 301(a)(7) of the Act or any other provision of law. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed and the application remains denied.