

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



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **JUN 22 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [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

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

*[Handwritten signature]*

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Dallas, Texas denied the application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on [REDACTED], to [REDACTED] and [REDACTED]. The applicant claims that his parents were married at the time of his birth and that his father acquired U.S. citizenship upon his birth in the United States, but concedes that his mother was not a U.S. citizen at the time of his birth. 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 father.

On September 18, 2012, the director issued the applicant a Request for Evidence (RFE) that his father met statutory requirements to transmit citizenship to the applicant. After considering the RFE response, the director found that the applicant failed to establish that his father 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, and denied the application, accordingly. *See Decision of the Field Office Director*, April 24, 2013. On appeal, filed May 23, 2013 and received by the AAO January 5, 2015, the applicant claims the evidence is sufficient to show that his father met the physical presence requirements.

The AAO conducts appellate review on a de novo basis. *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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1971. Former section 301(a)(7) of the Act therefore controls his claim to acquired citizenship.<sup>1</sup>

Former section 301(a)(7) of the Act stated 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 . . . 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. . .

In order to acquire U.S. citizenship at birth under this section, the applicant must therefore establish that his father was physically present in the United States for no less than ten years before [REDACTED], and that at least five of these years were after his father's fourteenth birthday, [REDACTED].

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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) remained the same after the re-designation and until 1986.

In support of the applicant's claim, he asserts that his father resided or was physically present in the United States during three periods: [REDACTED] (birth) to [REDACTED] (age 17); March 10, 1945 to July 15, 1947; and June 10, 1964 to January 1, 1967. See Application for Certificate of Citizenship (N-600), May 4, 2012.

The applicant submitted to the director documents including: border permits and military information regarding his grandfather; copies of pages containing handwritten entries from the 1920, 1930, and 1940 census records; several illegible documents; and the applicant's statement that he was awaiting his father's school records. The record also contains, among other things: a copy of the [REDACTED] California birth certificate of a child named "[REDACTED]" and a U.S. social security card issued in the same name; an untranslated copy of the Mexican birth certificate of the applicant; an untranslated, Spanish-language copy of a marriage certificate naming the applicant's parents; copies of identity documents for the applicant's father, including the data pages of a U.S. passport, an Alien Laborer's Identification Card (Form I-100, or "MICA") issued by the INS, an untranslated Mexican voter registration card; and several Texas birth certificates. On appeal, the applicant resubmits some evidence, while providing new documentation, including a 1946 ship manifest. Although several documents contain handwritten comments, their author is unknown. The record contains no affidavits from the applicant, the applicant's father, or anyone else supporting the physical presence claims.

The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for [REDACTED] years before the applicant's birth in [REDACTED]. First, the applicant has submitted no supporting affidavits or unsworn statements by identified declarants. Cf. *Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

Second, the applicant has not submitted English language translations of either what appear to be his Mexican birth certificate or his parents' Mexican marriage certificate,<sup>2</sup> both of which are in Spanish and are thus not available for full consideration. See 8 C.F.R. § 103.2(b)(3) requiring a full English translation of any foreign language document. We note several discrepancies regarding the identity of the applicant's father, including his name and birthdate. The applicant provides a California birth certificate and U.S. passport for "[REDACTED]" born [REDACTED]; however, the applicant's own Spanish-language birth record lists his father's name as "[REDACTED]" and states his age as "52" at the applicant's birth.<sup>3</sup> Further, the record reflects that the INS issued a MICA to "[REDACTED]" recording his admission as an *alien* laborer on June 10, 1964, and listing his birth year as [REDACTED]. The record contains no statements explaining these inconsistencies. Even allowing for different naming conventions in this country and Mexico, the

<sup>2</sup> If the applicant's parents were unmarried, then he must also show his father legitimated him before he turned 21.

<sup>3</sup> According the California birth certificate submitted by the applicant, his father was born in [REDACTED] and would have been 54 years old when the applicant was born.

applicant bears the burden of harmonizing the inconsistencies in order to establish the identity of his father. Until identity issues are resolved, the applicant cannot show that the person whose U.S. residency he seeks to establish is his father and not individual with a similar name.

Third, even assuming he is able to resolve the noted inconsistencies to establish parentage by a U.S. citizen father, the applicant has provided inconclusive evidence of the dates his father resided in the United States. We note that census records from 1920 indicate that "[redacted]" was the son of "[redacted]" while records from 1930 indicate that "[redacted]" was the son of "[redacted]" but unattributed notations on the census copies state that these persons were the applicant's uncle and aunt, rather than his parents. The applicant claims that a 1940 census document listing "[redacted]" also refers to his father and handwritten notations on the document indicate that the "[redacted]" listed there as "[redacted]" wife is actually his sister. These contradictory listings are not only inconclusive to identify a single person, the applicant's father, they also do not establish how long he was in the U.S. during this timeframe.

Although the applicant indicated he was seeking his father's school records to support the claim of U.S. residence until the age of [redacted] the record does not contain these documents. Regarding the period of residence associated with the military service claim, while a 1946 ship's manifest lists a [redacted] aboard the [redacted] in or about March 1946, it too fails to establish the duration of the [redacted] assignment or of this person's military service in general.<sup>4</sup> Finally, besides the MICA discussed above indicating a June 10, 1964 U.S. admission, there is no documentation of how long the admitted alien remained in the country or confirming the applicant's father's participation in the "Bracero Program."<sup>5</sup>

The applicant has failed to provide credible evidence regarding his parentage by a U.S. citizen he claims to be his father; this may include, for example, documentation of his parents' marriage and his birth, in English or English translation, as well as explanatory affidavits. Once parentage is resolved, he must establish the required residency by his father, not merely provide several indicators that his father was documented as present in the country. He may establish the required duration of physical presence by providing, for example, school transcripts and military service records, employment and pay records, medical records, and supporting affidavits.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> We note that veterans or their survivors may request military service records by submitting a Standard Form 180, Request Pertaining to Military Records, to the National Archives and Records Administration (NARA) as instructed on the form. The SF-180 can be downloaded from the NARA website or obtained at local Veterans Administration offices.

<sup>5</sup> This temporary agricultural worker program began in 1942 to augment the U.S. farm labor supply with Mexican workers during the war and officially ended in 1964. However, as a U.S. citizen, the applicant's father had no need to join this program to work in the United States. The applicant states that his father was given the MICA in order to enter the country "because he had no birth record" after "someone stole his bag in 1963 on a bus ride home."