



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-R-S-

DATE: JAN. 12, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 301, 8 U.S.C. § 1401 (1977) (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)). The Director, San Antonio Field Office, denied the application. We subsequently dismissed the Applicant's appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The record reflects that the Applicant was born on [REDACTED], in Mexico, to a U.S. citizen father and a Mexican citizen mother. The Applicant's parents married on [REDACTED] 1982, in Texas. The Applicant's mother became a U.S. citizen through naturalization on August 20, 2008. The Applicant claims that he acquired U.S. citizenship at birth through his U.S. citizen father pursuant to former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

In a March 6, 2013, decision, the Director determined that the Applicant did not establish eligibility for derivative citizenship under former section 301(a)(7) of the Act. Specifically, the Director noted that the Applicant's father did not begin to reside in the United States until 1969 or 1970. Thus, the Applicant was unable to demonstrate that his father was physically present in the United States for 10 years prior to the Applicant's birth in [REDACTED] as required by former section 301(a)(7) of the Act. The application was denied accordingly.

On appeal, the Applicant claimed that his father was unable to recall the dates of his physical presence in the United States due to dementia. The Applicant also asserted that the provision of former section 301(a)(7) of the Act requiring his father to be physically present in the United States for 10 years in order to transmit citizenship to the Applicant was unconstitutional. On September 9, 2013, we dismissed the Applicant's appeal finding that although the inconsistencies in his father's testimony regarding the dates of his physical presence in the United States could be reasonably explained by his medical condition, the Applicant still did not submit sufficient evidence to demonstrate that his father was physically present in the United States for 10 years prior to [REDACTED]. Furthermore, we explained that we lacked jurisdiction to consider the Applicant's claim of unconstitutionality of the provision of the former section 301(a)(7) of the Act relating to the physical presence requirement.

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On motion, the Applicant concedes that his father does not meet the 10-year physical presence requirement of former section 301(a)(7) of the Act. However, the Applicant asserts again that the provision of former section 301(a)(7) of the Act requiring him to establish that his father was physically present in the United States for 10 years prior to the Applicant's birth violates the guarantee of equal protection under the Fifth Amendment of the U.S. Constitution. In support of this argument on appeal, the Applicant cited the decision of the U.S. Court of Appeals for the Second Circuit (Second Circuit), *Morales-Santana v. Lynch*, 804 F.3d 521 (2nd Cir. 2015), which held that the physical presence requirement in sections 309(a) and (c)¹ of the Act, 8 U.S.C. § 1409(a) and (c), respectively, unconstitutionally discriminated on the basis of gender. On motion, the Applicant states that the U.S. District Court in the Western District of Texas (District Court) came to the same conclusion in *Villegas-Sarabia v. Johnson*, 2015 WL 4887462 (W.D. Tex. 2015), holding that the different physical presence requirements for unmarried citizen mothers and fathers in sections 309(a) and (c) of the Act, which incorporate the physical presence requirements of former section 301(a)(7) of the Act, violated equal protection of the Fifth Amendment of the U.S. Constitution. The Applicant claims that pursuant to the decisions of the Second Circuit and the District Court he is only required to show that his father was physically present in the United States for a period of one year prior to the Applicant's birth. The Applicant avers that he has satisfied this requirement because his father resided in the United States since 1969 or 1970, that is, for [REDACTED] years before the Applicant was born.

We are bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose. See *N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987). The Applicant's proceedings fall within the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit, which has not ruled on the issue of constitutionality of physical presence requirement of former section 301(a)(7) of the Act. We are not bound to follow the published decision of a U.S. District Court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Furthermore, as we have previously explained, we lack jurisdiction to rule on the constitutional issue raised by the Applicant on appeal and the instant motion. See, e.g., *Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997) (like the Board of Immigration Appeals (the Board), we do not have appellate jurisdiction over constitutional issues.) In light of the above, we may not consider the constitutionality of the provisions of former section 301(a)(7) of the Act. Rather, our review is limited to determination of whether the Applicant has established that he meets the requirements regarding his father's physical presence in the United States contained in the language of former section 301(a)(7) of the Act. On that issue, we affirm that the record does not demonstrate that the Applicant's father was present in the United States for 10 years prior to [REDACTED]. Furthermore, the

¹ Section 309(c) provides that a person born outside the United States to an unwed mother shall be held to have acquired at birth the nationality status of the mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

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Applicant does not submit any evidence of his father's physical presence in the United States with the instant motion.

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-R-S-*, ID# 16346 (AAO Jan. 12, 2016)