

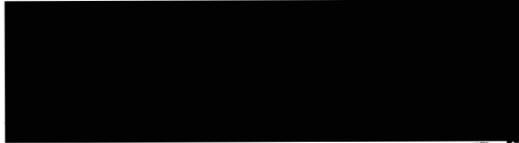


U.S. Department of Justice

Immigration and Naturalization Service

ER

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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FILE:

Office: Houston

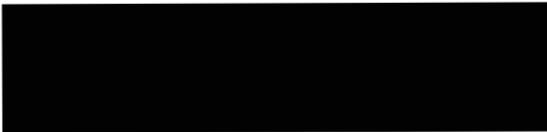
Date:

IN RE: Applicant:

APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:



Identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 17, 1957 in Mexico. The applicant's father, [REDACTED] was born in Texas in August 1930. The applicant's mother, [REDACTED], was born in Mexico in 1936 and never claimed to be a United States citizen. The applicant's parents married each other in January 1966. The applicant alleges that he arrived in the United States on March 4, 1970 with an immigrant visa. That evidence is not present in the record for review. The applicant claims that he acquired United States citizenship at birth under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), at the time of the applicant's birth and denied the application accordingly.

On appeal, the applicant's representative states that the applicant believes that his father lived almost all of his life in the United States. The representative indicates that the applicant's father is deceased and proof of his residence in the 1940 is hard to obtain.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986 provides, in pertinent part, that 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 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The record contains a copy of the father's Form DD-214 which reflects that he served 1 year, 10 months and 19 days in the U.S. Army from January 12, 1953 to December 1, 1954. The applicant's father listed a Ciudad Juarez, Mexico address when the applicant was born. The record is devoid of documentation to support assertions that the applicant's father actually resided at the El Paso, Texas address contained on his Form DD-214.



The record contains a notation that the applicant was previously deported and he returned to El Paso. Although that evidence is not present in the record for review, in order for a person to be deported, alienage must be established. The applicant indicated that he entered the United States with an immigrant visa. The American Consulate normally reviews visa petitions for possible claims to United States citizenship prior to issuing an immigrant visa. The applicant's complete immigrant visa packet should be reviewed and attached if this matter should come before the Associate Commissioner again.

Absent such supportive evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his father was physically present in the United States for the required period prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has not met this burden of establishing his father had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.