



EV

U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: 

Office: San Antonio

Date:

JUN 18 2001

IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

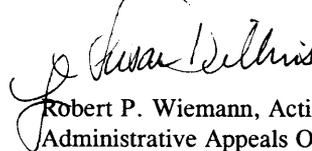
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, San Antonio, 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 October 17, 1956, in Mexico. The applicant's father, [REDACTED] (Alvarado-Morales), was born in the United States in July 1929. The applicant's mother, [REDACTED] was born in December 1936 in Mexico and never had a claim to United States citizenship. The applicant's parents married each other on January 1, 1952, in Mexico, and they were divorced on July 27, 1978. The applicant claims that he acquired United States citizenship at birth under Section 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.

On appeal, counsel disagrees with the decision and argues that the district director should have considered all the father's time in the United States. Counsel states that affidavits from key witnesses were completely ignored.

[REDACTED], 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 [REDACTED] 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.

In a sworn affidavit dated November 5, 1993, the applicant's father stated that he was born in the United States in July 1929 and moved to Mexico at the age of 1 where he remained and attended school for 6 years. The applicant's father stated under oath that he returned to the United States in 1945 at the age of 16 to work. He would return to visit in Mexico when he was not working as a migrant worker. Social Security records from 1945 to 1992 reflect that the applicant's father earned \$115.00 in 1945, \$30.00 in 1946, \$40.12 in 1950, and \$151.10 in 1951. There are no listed earnings for the

years 1947, 1948, 1949, 1952, 1953, 1954, 1955 and 1956. The applicant's father was drafted into the military on June 18, 1954, and was discharged on January 25, 1956. The record also reflects that the applicant's father was listed as a lodger in a household at [REDACTED] or the Census of April 1, 1950.

Although the applicant's father indicated in a sworn statement dated June 24, 1993, that he used to travel to various states to work prior to entering the U.S. Army in June 1954, he also states that he made trips back to Mexico "quite often," and his stays in Mexico lasted approximately two months.

The record contains another sworn statement by the applicant's father dated April 28, 1993, in which he states that he stayed in Mexico until he was about 20 years old and then he went to San Antonio in 1949 or 1950. Later in that statement, the father states that he came to Uvalde in about 1947.

The applicant indicated on his application filed in June 1994 that he arrived in the United States in 1968 by presenting a Border Crossing Card. There is no evidence in the record to indicate that he ever applied for a United States passport in Mexico, and there is no explanation as to why he waited 37 years to pursue a claim to U.S. citizenship.

Counsel asserts that the Service failed to give weight to the affidavits and sworn testimony given by people who saw the applicant's father on an almost daily basis.

The record contains an affidavit from [REDACTED] who alleges that she knew the applicant's father because he used to work for her husband off and on for about 10 years. In the June 1993 sworn statement, the applicant's father claimed that he did not know anyone named [REDACTED]

The record contains an affidavit from [REDACTED] who alleges that the applicant's father lived with her family in Uvalde, Texas, off and on from 1945 to 1952. She states that she last saw him in [REDACTED] around 1956. In the June 1993 sworn statement, the applicant's father claimed that he must have known Irma before he entered the service because he never returned to Uvalde after he got out of the service (in 1956).

The record also contains affidavits from the applicant; the applicant's mother; [REDACTED] who hired the applicant's father to do sheep shearing and who last saw the father when the father left for the army in 1954; and [REDACTED]'s sister.

Although the record reflects that the applicant's father did spend time in the United States after 1945 or 1947 or 1949 or 1950, depending upon which parts of the father's sworn statements a

person reads, and the father probably worked at various jobs where the employers did not deduct social security taxes; however, there are contradictory statements regarding when he actually entered the United States after living in Mexico for at least 15 or more years and large time gaps in the father's testimony concerning how much time he actually spent annually residing in Mexico and in the United States. The lack of the father's specificity regarding such dates or time frames and the absence of evidence to support such time frames regarding his actual physical presence in the United States leads to a failure of the applicant to establish that his father met the physical presence requirements prior to the applicant's birth by a preponderance of the evidence.

It is conceded that the father accumulated one year of physical presence in the United States after his birth and two years associated with his military service until the applicant's birth in October 1956. However, the remaining seven years starting in 1945 or 1947 or 1949 or 1950 have not been established by probative evidence or consistent testimony. Social Security records confirm the father's presence in the United States for a minimal period of time in 1945, 1946, 1950 and 1951. The father indicates in his sworn affidavits that his "quite often" trips to Mexico lasted from one, two, three and up to six or eight months prior to his entry into the military service.

Absent probative 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 her mother 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.