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U.S. Department of Justice

Immigration and Naturalization Service

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[redacted]

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

FILE: [redacted] Office: San Antonio Date: MAR 16 2001

IN RE: Applicant: [redacted]

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:

[redacted]

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 November 24, 1950, in Mexico. The applicant's father, [redacted] was born in Carrizo Springs, Texas, in December 1924. The applicant's mother, [redacted], was born in Mexico in October 1927 and never became a U.S. citizen. The applicant's parents married each other in August 1945. The applicant seeks a certificate of citizenship under § 201(g) of the Nationality Act of 1940 (NA 1940), based on his claim that he acquired U.S. citizenship at birth through his father.

The district director determined the record failed to establish that the applicant's United States citizen parent had resided in the United States or its outlying possessions for a period of 10 years, at least 5 of which were after the age of 16 years. The district director then denied the application accordingly.

On appeal, counsel states that the Service failed to give proper weight to all the evidence in the record. Counsel also states that the Service acted arbitrarily and capriciously when it failed to consider the fact that the applicant's siblings had previously been issued certificates if citizenship.

The citizenship of a person born outside the United States is determined by the statutes and law in existence at the time of the person's birth. Matter of B--, 5 I&N Dec. 291 (BIA 1953), overruled on other grounds; Matter of M--, 7 I&N Dec. 646 (BIA 1958); Montana v. Kennedy, 278 F.2d 68 (7th Cir. 1960), aff'd, 366 U.S. 308 (1961). § 201(g) of NA 1940, which was superseded by § 301(g) of the Immigration and Nationality Act (the Act), was in effect at the time of the applicant's birth.

Section 201 of NA 1940 states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> (g) 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, resided in the United States 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 sixteen years...

The district director examined documentation submitted with the application and Service files of the applicant's two siblings, [redacted] who was born in January 1946 and [redacted] who was born in June 1956. Both siblings were issued certificates of citizenship in 1974 and 1975 respectively.

The district director noted that the father's delayed Texas birth certificate [redacted] was created in 1945, 21 years after the father's birth in 1924, based on the affidavits of two people. The district director also noted that the father's Baptismal Certificate showing that he was baptized in November 1944, nearly 20 years after his birth, was created based on information contained in the delayed birth certificate [redacted] The record also contains a copy of a U.S. passport issued to the father in June 1995 and valid for 10 years.

In Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), the Board held that, unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship. Based on the holding in Villanueva, the Associate Commissioner finds that the applicant's father was a United States citizen.

The district director reviewed the social security records for the father submitted with the application and noted that the father worked a small amount of time in the United States in 1943, 1944 and 1945. The records show no evidence of employment in 1946 through 1949. In 1950, the year of the applicant's birth, the father worked only for a short period of time. The record shows that the father registered for Selective Service in January 1944. Although the applicant's mother stated under oath that the father worked all the time in the Untied States after their marriage in 1945, she could not explain why no social security records existed for that additional period of time. Further, no record of the father's presence in the United States was found on the records from the Bureau of Census for 1940 and there no Federal Income Tax records for review.

The fact that the applicant applied for and was issued a nonimmigrant alien border crossing card in May 1974 instead of applying for a certificate of citizenship as did his two siblings in 1974 and 1975 respectively is not addressed in the record. Further, the March 12, 1974 application of the applicant's sister, [redacted], contains a cryptic notation to see file of her brother, [redacted], [redacted] for "presented" documents. That file is not available for review in this proceedings.

The retention requirements in effect at the time of the applicant's birth under § 201(g) and (h) of NA 1940, stipulated that a citizen child born abroad to one U.S. citizen and one alien parent, in order to retain United States citizenship, must demonstrate 5 years residence in the United States between ages 13 and 21. The Act of 1952 stipulated that such citizen born abroad must demonstrate 5 years of continuous physical presence in the United States between the ages of 13 and 28 in order to retain citizenship. The Act of October 27, 1972, extensively liberalized the retention requirements extending back to birth abroad after May 24, 1934, and reduced the period of continuous physical presence to 2 years. The

retention requirements were eliminated by an amendment to the Act effective October 10, 1978. Persons born on or after October 10, 1952, are relieved of the necessity of complying with any retention requirements.

The applicant could not have been aware that he might also have a claim to U.S. citizenship in time to permit entry into the United States before the age of 28 when his two siblings were issued certificates of citizenship when the applicant was 24 years old and, instead, he applied for a nonimmigrant alien border crossing card in 1974. Therefore, it is concluded that he is not subject to the retention requirements. See INTERP 349.1(c).

Notwithstanding the fact that the applicant's two siblings were issued certificates of citizenship, 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 resided in the United States for the required period of time 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.