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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

[REDACTED]

Public Copy

FILE: [REDACTED] Office: San Antonio

Date: **MAR 17 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 13, 1957, in Mexico. The applicant's father, [REDACTED] was born in the United States in March 1923. The applicant's mother, [REDACTED], was born in April 1923 in Mexico and never had a claim to United States citizenship. The applicant's parents married each other on June 18, 1941. 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.

On appeal, counsel states that the father's affidavit proves conclusively that the required physical presence was established prior to the applicant's birth. Counsel requests an additional 30 days in which to submit a brief. More than 30 days have elapsed since the appeal was filed on May 24, 2000 and no additional documentation has been included in the record. Therefore, a decision will be rendered based on the present record.

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 provides, in part and effective for persons born prior to November 14, 1986, 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 reflects that the applicant was lawfully admitted for permanent residence on February 26, 1982. The record fails to show whether the applicant ever applied for a U.S. passport at the appropriate American Consulate in Mexico.

The record contains a March 3, 1981 sworn statement given by the applicant's father in behalf of the applicant and his three siblings. The applicant's father died in March 1992. The

applicant's father stated that his family moved to Mexico in 1931 and between 1931 and December 1951 he did not return to the United States. Between December 1951 and sometime in 1954 he was a daily commuter working in the United States.

The father's social security earning's report dated December 30, 1986 reflects that he began his earnings in the year 1956 and recorded earnings every year until 1986. The father's assertion that he was physically present in the United States, even as a commuter between December 1951 and 1955 is unsupported in the record. The applicant's siblings who have been issued certificates of U.S. citizenship were all born in 1961 or later which is at least 5 years after the applicant's father commenced verifiable employment in the United States.

Absent additional 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 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.