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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]

FILE: [Redacted]

Office: San Antonio

Date: 06 SEP 2001

IN RE: Applicant:

[Redacted]

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:

[Redacted]

Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 September 13, 1974, in Mexico. The applicant's father, [REDACTED] was born in the United States in November 1953. The applicant's mother, [REDACTED] was born in Mexico in December 1957 and never had a claim to United States citizenship. The applicant's parents married each other on February 1, 1982, and were divorced on February 19, 1987. 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 section 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 district director's decision was an abuse of discretion. Counsel suggests that the father's registration in Santa Rosa School in September 1962, his social security records beginning in 1968 through 1974, establish the required amount of physical presence. Counsel asserts that undo emphasis was placed on the father's inconsistent testimony by the Service.

Counsel requests another interview or oral argument. 8 C.F.R. 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Service has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases which involve unique factors or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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.

In an affidavit dated August 21, 1999, the applicant's father states that he has resided continuously in the United States since sometime in March 1962. In a sworn statement given to a Service officer with his attorney present on March 22, 2000, the applicant's father states, with inconsistency, that (a) he first went to Mexico when he was 7 or 8 and then came back when he was 15 or 16, and (b) he started to live permanently in the United States at the age of 7 or 8. The applicant's father states that he didn't go to school. This assertion is supported by the fact that he enrolled in school in 1962 but never attended.

The applicant was lawfully admitted for permanent residence on April 26, 1983. It must be noted that an American Consulate or Embassy thoroughly reviews any petition for alien relative to determine whether the applicant has a claim to U.S. citizenship because United States citizens are not eligible to receive U.S. immigrant visas. The applicant's immigrant visa application is not present for review of possible consular notations made at the time the immigrant visa was issued. Should this matter appear before the Associate Commissioner again, it must be accompanied by the applicant's complete service record and the Service record of the applicant's mother, [REDACTED] whose visa was issued at the same time as the applicant's as well as the Service records of the applicant's brothers [REDACTED], [REDACTED] and [REDACTED].

As discussed by the district director, the father's employment records begin in 1968 when he was 15 years old. From the record, it is not possible to determine the actual amount of time the applicant's father spent in the United States during those 8 years of employment due to the low earnings and the absence of corroborating and supporting documentation. Further, the record is devoid of documentation in support of his residency in the United States from his birth in November 1953 and baptism in April 1954 to his enrollment in school in 1962. The father's affidavit of August 1999 indicates that he started residing permanently in the United States in March 1962. Other documentation indicates that he began residing permanently in the United States in 1968.

Absent supportive evidence which corroborates the physical presence of the applicant's father, 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.