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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

FILE

[Redacted]

Office: Houston

Date:

AUG 19 2002

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. 1401(g)

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, 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 6, 1964, in Mexico. The applicant's father, [REDACTED] was born in Texas in August 1928. The applicant's mother, [REDACTED] was born in 1935 in Mexico and never had a claim to United States citizenship. According to the application, the applicant's parents married each other on December 1, 1962. 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.

The applicant failed to submit a marriage certificate of his parents, and counsel submitted a statement indicating that the parents never married each other. The district director also determined that the applicant was not legitimated by the parent's marriage and was not eligible for the benefits of section 301(g) of the Act and denied the application accordingly.

On appeal, counsel refers to the four affidavits submitted with the application and asserts that the district director did not correctly weigh the evidence in support of the application.

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 the social security record of the applicant's father showing that he had intermittent and minimal earnings in the United States prior to the applicant's birth. The four nearly identical affidavits, submitted by nieces and nephews of the applicant's father (the applicant's cousins) in support of the applicant's claim, parrot the fact that the affiants knew the

applicant's father all their lives from a specific date to the father's death in 1991. All affiants state that they met the applicant's father after 1937 but knew he lived in Santa Rosa, Texas from 1937 onward. The Associate Commissioner wonders how an individual who first met the applicant's father in 1952 can attest that the father lived at a specific address from 1937 onward. Such an assertion is completely hearsay. Further, these affidavits are uncorroborated and unsupported by evidence to show that the affiants were in a position to provide this information.

The record is silent as to whether the applicant has ever applied for a United States passport at an American Consulate abroad prior to the father's death, or why he waited until May 2001 to submit the present application.

Lastly, the applicant's parents never married. The applicant was not legitimated by the parent's marriage in Mexico or in Texas. Therefore, he is ineligible for the benefit sought.

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 that his father had been physically present in the United States a total of 10 years, 5 of which were after the age 14, or that he was legitimated by his father. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.