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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: Dallas

Date: JUL 26 2002

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:

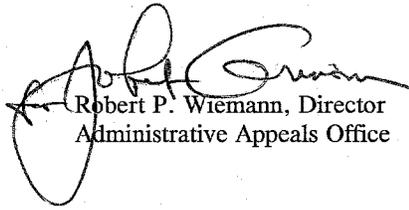
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Dallas, 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 1, 1958, in Mexico. The applicant's father, [REDACTED] was allegedly born in Tornillo, Texas in February 1930. The applicant's mother, [REDACTED] was born in June 1931 in Mexico and became a naturalized U.S. citizen on September 1, 1989. The applicant's parents married each other on December 28, 1952 and separated in 1960. 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 questioned documentation in the form of the father's delayed birth certificate, the father's delayed baptismal certificate, and the brother's and the applicant's Mexican birth certificates reflecting the father's birth in Mexico. The district director determined that the record failed to establish that the applicant's father, [REDACTED] is a United States citizen and denied the application accordingly.

On appeal, counsel states that the father's birth certificate was first issued in 1949 and reissued in 1973. Counsel states that the father's baptismal certificate reflects that he was baptized on 1930, three days after his birth. Counsel further states that the person referred to by the district director as the applicant's brother is actually the applicant's uncle (the father's brother).

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 a nearly illegible copy of a birth certificate of (illegible) Gonzalez which, with the aid of a magnifying glass, reflects that this person was born in February 1932 and not in February 1930 as indicated on the application. This document appears to have been initially issued on March 6, 1946. If this birth certificate belongs to the applicant's uncle, as indicated, then the father's birth certificate is not present in the record for review.

The record contains a Certificate of Baptism dated September 6, 2000, indicating that [REDACTED] child of [REDACTED] and [REDACTED] was baptized on February 20, 1930. The record also contains a Selective Service Registration Card for Isidoro Gonzalez issued in September 1948 and on which he indicated that he was born in the United States. Such evidence is considered to be secondary evidence and may be considered if primary evidence is unavailable. The record is silent as to why the primary evidence, the father's birth certificate, is unavailable.

The district director states that the applicant was last admitted as a lawful permanent resident on April 8, 1998. Evidence of such an admission is not present in the record for review. On the application filed on August 24, 2000, the applicant states that he arrived in 1987 illegally.

The record also fails to contain a copy of the consular officer's interview of the applicant when the applicant applied for and was issued an immigrant visa. Consular officers normally review applications carefully to determine whether an alien has a claim to U.S. citizenship when at least one of the parents was born in the United States.

Lastly, the applicant has failed to explain why he waited for nearly 42 years to advance a claim to United States citizenship, or why he never sought such a claim previously at an American Consulate abroad.

Service regulations at 8 C.F.R. 341.2(c) state 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 shown that he acquired United States citizenship at birth because he has failed to establish that his father was born in the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.