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U.S. Department of Justice

Immigration and Naturalization Service

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



JUN 17 2002

FILE: [Redacted]

Office: San Antonio

Date:

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: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 14, 1955, in Mexico. The applicant's father, Vicente Castro, was born in the United States in July 1916. The applicant's mother, [REDACTED] was born in October 1922 in Mexico and never had a claim to United States citizenship. The applicant's parents married each other on September 21, 1938. The applicant was lawfully admitted for permanent residence in May 1956 and seeks a certificate of citizenship under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined that 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, the applicant disagrees with the decision and argues that the district director applied the wrong statute. The applicant also states that his two older siblings were granted certificates of citizenship. The applicant then discusses his father's social security records, his father's prior conflicting testimony under oath, changes in the law, and the fact that he is a federal prisoner and cannot get the requested information.

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.

On appeal, the applicant states that his siblings, Heliodoro (born in July 1939) and Amandina (born in December 1940), were issued certificates of citizenship.

Both Heliodoro and Amandina were born prior to January 13, 1941, and they were subject to the provisions of section 1993 of the

Revised Statutes (R.S. section 1993). R.S. section 1993 was in effect until January 13, 1941, when it was superseded by the Nationality Act of 1940 (NA 1940). NA 1940 was in effect until December 24, 1952, when it was superseded by the present Act.

R.S. section 1993 was amended by the Act of May 24, 1934 (48 Stat. 797) which provided, in part, that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Immigration and Naturalization Service.

Before NA 1940, there was no definition of the term "residence" and no specification as to its nature or duration. The administrative authorities read the statute generously, and ruled that a temporary abode in the United States by the citizen parent or parents was sufficient compliance, even though such abode was concededly a temporary visit. It is the settled administrative policy that the prior residence requirement is satisfied for persons born prior to January 13, 1941, the effective date of NA 1940, if the citizen parent or parents had a temporary sojourn in the United States prior to the child's birth. Matter of V--, 6 I&N Dec. 1 (A.G. 1954), held that two visits to the United States by a United States citizen parent prior to the birth of her children, one for 2 days and the other for a few hours, are held to satisfy the residence requirement.

NA 1940 introduced residence requirements for the citizen parent and retention requirements for the child born abroad. Not only did the citizen parent have to demonstrate a certain amount of residence in the United States prior to the child's birth but also the child had to enter the United States and reside in the United States for a certain number of years in order to retain his or her U.S. citizenship. 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 district director thoroughly addressed the issues in this matter and no new evidence has been entered into the record. The father's social security records reflect that the father worked in the United States from 1951 to 1955 but he was not physically present in the United States for that entire period of time. The father's sworn statements given in 1958 and 1963 are a matter of record. They are contradictory by placing the father in Mexico and in the United States at the same time. The father testified that he worked in the United States about six months each year during that time. Lastly, the record contains the father's own acknowledgement when the applicant immigrated that he (the father) lacked the physical presence in the United States to transmit U.S. citizenship to the rest of his children.

Absent evidence to the contrary, 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 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. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.