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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



FILE: [Redacted] Office: Harlingen

Date: JUN 28 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 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, Harlingen, 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 April 21, 1973, in Mexico. The applicant's father, Eladio Arenas, was born in Mexico in March 1950, and acquired U.S. citizenship through his parents. The applicant's mother, Guadalupe Casanova, was born in April 1953 in Mexico and never had a claim to U.S. citizenship. The applicant's parents married each other on April 26, 1968. 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 Act at the time of the applicant's birth.

On appeal, counsel states that the decision misstates the law and the facts. Counsel asserts that the applicant's citizen parent only had to show physical presence and not that he had resided in the United States. Counsel further asserts that the decision wholly disregards the two affidavits attached to 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 an affidavit from the applicant's father attesting that he has been physically present and resided in the United States from 1950 to 1956; from 1963 to 1968; and from 1970 to the present. This affidavit is unsupported by corroborating documentation.

The record contains a second affidavit from [REDACTED] repeating the above information. [REDACTED] affidavit is unsupported by corroborating documentation and fails to place him

in the same location as [REDACTED] during the stipulated periods of time.

Absent such 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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.