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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

PUBLIC COPY



FILE:

Office: El Paso

Date:

18 NOV 2002

IN RE: Applicant:

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:

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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, El Paso, 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 December 31, 1990, in Mexico. The applicant's father [REDACTED] was born in the United States in August 1955. The applicant's mother, [REDACTED] was born in June 1964 in Mexico and never had a claim to United States citizenship. The applicant's parents married each other on September 27, 2000. 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 5 years, at least 2 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's father disagrees with the decision. He relies heavily on a document from Kemp & Solis, who manage the apartment complex in which the applicant's grandmother lived. The document indicates that [REDACTED] (the applicant's paternal grandmother) lived at 605 S. El Paso, in apartment 7 from November 4, 1970 to July 4, 1975, when the applicant's father was between the ages of 15 and 20 years old. The document indicates that no records were found to indicate that there were any other occupants of the apartment. The applicant's father states that there are no school records as most of his schooling was done in Mexico. The father states that he lived with his mother until approximately 1979. The assertions submitted on appeal are still unsupported by corroborating evidence.

Section 301, effective for persons born on or after November 14, 1986 of the Act, provides in part, that the following shall be nationals and citizens of the United States at birth:

(g) 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 5 years, at least 2 of which were after attaining the age 14 years...

The record refers to three different [REDACTED] For clarification they are identified as follows:

1 [REDACTED] born in the United States in August 1955 and the applicant's father.

[REDACTED] the applicants brother, born in Mexico in January 1988 to the above father. His mother [REDACTED] the second wife of [REDACTED]

[REDACTED] the applicant's half-brother, born in the United States in March 1979 to the above father. His mother [REDACTED] the first wife of [REDACTED]

The record contains Social Security earnings for [REDACTED] in 1980 and reads in part:

Year	Locations	Yearly Total
1980	TX	\$ 6602
1981	MI, OH	\$ 3147
1982	OH	\$ 7835
1983	TN, NC	\$ 7194
1984	CO	\$ 699
1985	MN, CA	\$ 5631
1986	CA	\$18788
1987	IA	\$ 149
1988	--	NONE
1989	CA	\$ 1675
1990	--	NONE
1991	--	NONE

Some Social Security statements break down the yearly earnings by quarters, so it is possible to determine the approximate time spent working. There is breakdown accompanying the above earnings record regarding the number of months during a given year that work was performed. The applicant's father has not provided any comments in that respect, nor does the record contain any statement by him under oath to clarify his employment record. The earnings during 1986 appear sufficient to qualify as one year of employment, but for the rest, it is difficult to make a determination.

The only other documented items reflecting the physical presence of the father in the United States are his own birth certificate and his certificate showing his marriage to Genoveva in 1979 at 24 years of age. The affidavit which asserts that the father "was physically with us during the first 8 years of my life in El Paso" (1979 to 1987) is contradicted by the father's employment records which place him in several other states in the United States between 1981 and 1987, none of which is Texas. There is no accurate way to ascertain exactly how many weeks or months the father was physically present in the United States from the documentation in the record. The father became 18 years old in 1973. The record fails to show that he registered for Selective Service at that time.

Absent additional 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 of establishing his father had been physically present in the United States a total of 5 years, 2 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.