

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

22

FILE: [REDACTED] Office: Harlingen, Texas

Date: MAY 14 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harligen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on June 8, 1970 in Ciudad Reynosa, Tamaulipas, Mexico. The record indicates that the applicant's father, [REDACTED] (Mr. [REDACTED] was born in Edcouch, Texas on May 20, 1945, and that he is a United States (U.S.) citizen. The applicant's mother, [REDACTED] was born in China, [REDACTED] Mexico on December 2, 1944. She is not a U.S. citizen. The applicant's parents married on June 24, 1963 in Ciudad Reynosa, Tamaulipas, Mexico. The record indicates that the applicant was admitted to the United States on May 19, 1973. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The record reflects that the applicant filed an Application for Certificate of Citizenship (Form N-600) with the Harligen, Texas, Immigration and Naturalization Service District office ("INS", now known as the Bureau of Citizenship and Immigration Services) on November 5, 1998. On April 26, 1999, the applicant was interviewed by the INS regarding his N-600 application. At that time, the applicant was advised that he needed to provide evidence that his father was physically present in the United States for the period required under section 301(a)(7) of the former Act. The applicant was also advised that he would receive a notice in the future for a second interview pertaining to the requested evidence.

The record indicates that the applicant was scheduled for a second interview on September 14, 1999. In a letter dated September 14, 1999, and received by the INS on September 16, 1999, counsel for the applicant requested that the interview be rescheduled. No explanation was provided regarding where the applicant was or why he was unable to attend the scheduled interview. The applicant was subsequently rescheduled for a third interview on November 28, 2000. The record indicates that neither the applicant nor his attorney appeared for the third interview, and no explanation was provided at that time.

On January 18, 2002, the district director determined that based on the evidence in the record, the applicant had failed to establish that his United States citizen father was physically present in the United States or its outlying possessions for a period of 10 years prior to the applicant's birth, at least 5 of which were after May 20, 1959, when his father reached the age of 14. See *District*

Director Decision, dated January 18, 2002.

On appeal, counsel, asserts that the applicant did not appear at his November 28, 2000 interview because he was in prison and that the applicant was still imprisoned at the time the notice of appeal was filed, February 1, 2002. Counsel asserts further that some evidence was already submitted to prove that the applicant's father met the residency requirements under section 301(a)(7) of the Act, and that additional proof would be submitted in the future. No additional information or documentation was received by the AAO.

This office finds that the applicant was given ample time and opportunity to present evidence pertaining to his father's physical presence in the United States, and that the district director's final adjudication of the applicant's claim on January 18, 2002 was proper.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. See *Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). In order to derive citizenship pursuant to section 301(a)(7) of the former Act, it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 14. See § 301(a)(7) of the former Act.

The definition of "physical presence" was addressed in *Matter of V*, 9 I&N Dec. 558 (BIA 1962). In determining that the term "physical presence" meant "continuous physical presence" in the United States, the Board of Immigration Appeals (BIA) stated:

We must look to the Congressional committee reports in an effort to determine the underlying Congressional intent and purpose in the 1952 Act

. . . .

There is no indication in the committee reports that the language change [from residence in the

[redacted]

United States to physical presence in the United States] was for purposes other than the elimination of troublesome problems involving "constructive" residence which had theretofore been encountered, and to make it clear that "residence" meant "physical presence" and nothing else.

Matter of V at 560.

In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that [redacted] was physically present in the U.S. for ten years between May 20, 1945 and June 7, 1970, and that five of those years were after May 20, 1959. The record contains numerous documents relating to [redacted] and the applicant's physical presence in the United States after June 8, 1970. However, the evidence in the record pertaining to [redacted] physical presence in the United States prior to June 7, 1970, consists only of the following documents:

A letter from Valley Shamrock, Inc. stating that [redacted] worked for the company between January 1, 1968 and February 2, 1979;

A life insurance premium statement dated March 15, 1969. The statement contains no address or residence information for [redacted]

A sworn affidavit from [redacted] stating that [redacted] worked for her father between 1958 and 1964;

A sworn statement from [redacted] stating that [redacted] lived with him from 1958 to 1964;

A sworn affidavit from [redacted] essentially stating that he has lived and worked in the United States his entire life.

The evidence submitted fails to establish that [redacted] was physically present in the United States for the time period required by section 301(a)(7) of the former Act. Only one of the documents submitted (the Valley Shamrock Inc. letter) indicates that [redacted] may have been physically present in the United States between January 1, 1968 and June 7, 1970. However, this period of time accounts for only 1 ½ of the 10 years of physical presence required by section 301(a)(7). None of the other documentary evidence in the record establishes that Mr. [redacted] was physically present in the U.S. during the years required by section 301(a)(7) of the former Act.

Moreover, the affidavits submitted by counsel are not found

to be probative of Mr. [REDACTED] physical presence in the United States. The affidavits are vague and lack basic and material details regarding dates and locations that Mr. [REDACTED] lived, and they contain no corroborative evidence or information.

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. See also § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. Given the absence of evidence in the record to support the claim that [REDACTED] was physically present in the United States for the requisite time period, the applicant has not met the burden of establishing that his father was physically present in the United States a total of ten years, five of which were after the age of 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.