

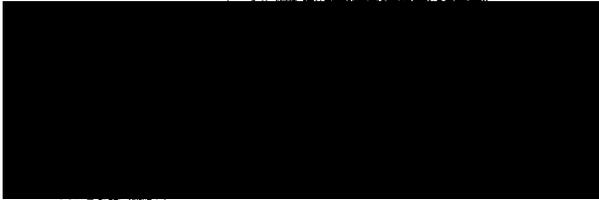
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**U.S. Department of Homeland Security
Citizenship and Immigration Services**

ED

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



Date: **NOV 25 2003**

FILE  Office: PHOENIX, AZ

IN RE: Applicant: 

APPLICATION:

Application for Certificate of Citizenship under section 301(g) of the Immigration and Nationality Ac, 8 U.S.C. § 1401(g)

ON BEHALF OF APPLICANT:



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 Citizenship and Immigration Services (CIS) 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. Wieman

Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as moot.

The record reflects that the applicant was born on December 18, 1957, in Mexico. The applicant's father, [REDACTED] was born in the United States in 1910 and died in 1973. The applicant's mother, [REDACTED] was born in July 1931 in Mexico. The applicant's parents married each other on April 12, 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 on February 18, 2000, that the record failed to establish that the applicant's United States citizen father 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, at the time of the applicant's birth, as required under section 301(g) of the Act. The application was denied accordingly.

On appeal, counsel discusses the procedural and factual history of the applicant's case, and asserts that the applicant has established that he is a U.S. citizen.¹

The record reflects that immigration court deportation proceedings were terminated against the applicant in December 1991, based on the immigration judge's (IJ) determination that the applicant is a U.S. citizen. The Office of the District Counsel appealed the IJ's decision to the Board of Immigration Appeals (Board) in 1992, and the Board remanded the case in May 1999, for further cross-examination. A new hearing was held in June 2000. The IJ again terminated proceedings based on a finding that the applicant is a U.S. citizen. The Board affirmed the IJ's decision in November 2002. No subsequent appeals or motions were filed.

8 C.F.R. § 3.1(d)(6) states, in pertinent part:

(6) Finality of Decision. The decision of the Board shall be final except in those cases reviewed by the Attorney General [now Secretary, Homeland Security, "Secretary"] in accordance with paragraph (h) of this section.

8 C.F.R. § 3.1(h) states, in pertinent part:

¹ The record reflects that although counsel filed a Notice of Appeal in March 2000, the appeal was not forwarded to the AAO until March 2003.

(h) Referral of cases to the Attorney General [Secretary].

(1) The Board shall refer to the Attorney General [Secretary] for review of its decision all cases which:

- (i) The Attorney General [Secretary] directs the Board to refer to him.
- (ii) The Chairman or a majority of the Board believes should be referred to the Attorney General [Secretary] for review.
- (iii) The Commissioner requests be referred to the Attorney General [Secretary] for review.

The record in the present matter contains a final Board order affirming the IJ's determination that the applicant is a U.S. citizen. There is no indication in the record that the Board referred the applicant's case to the Secretary for review pursuant to 8 C.F.R. § 3.1(h). The November 2002, Board decision affirming that the applicant is a U.S. citizen is therefore final and binding on CIS. Accordingly, the present AAO appeal will be rejected as moot.

ORDER: The appeal will be rejected as moot.