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

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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



PUBLIC COPY

FILE: [Redacted]

Office: El Paso, Texas

Date:

OCT 07 2003

IN RE: Applicant: [Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF APPLICANT: Self-represented

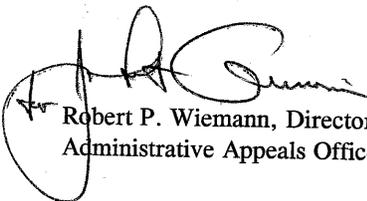
INSTRUCTIONS:

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. Wiemann, Director  
Administrative Appeals Office

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

The record reflects that the applicant was born on December 23, 1964, in Juarez, Mexico. The applicant's father, [REDACTED] was born on January 3, 1943 in Rosales Mexico and derived citizenship at birth through his mother. The applicant's mother, [REDACTED] was born in Mexico and the record reflects that she is a legal permanent resident. There is no indication that she is a U.S. citizen. The applicant's parents married on February 16, 1963 in Rosales, Mexico. The record indicates that the applicant entered the United States illegally through Texas on July 25, 1977. The applicant seeks a certificate of citizenship under section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

In a decision dated April 28, 2003, the interim district director determined that the applicant had failed to establish that his father (Mr. [REDACTED] 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 Mr. [REDACTED] reached the age of 14.

On appeal, the applicant states that he will provide further evidence of his father's physical presence in the U.S. He also asserts that four different officers had examined his case and no one had ever mentioned that he needed more evidence. No further evidence has been entered into the record.

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 (9<sup>th</sup> Cir., 2000). The applicant was born in Mexico in 1964, and the version of section 301 of the Act that was in effect at that time (section 301(a)(7)) controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years . . . .

In the present application for a certificate of citizenship, it must be established that Mr. [REDACTED] resided in the U.S. for at least 10 years prior to the applicant's birth in 1964. Five of those years must be after Mr. [REDACTED] reached the age of 14 in 1957.

The applicant's N-600, Application for Certificate of Citizenship, reflects that Mr. [REDACTED] first entered the U.S. in 1953 at the age of 10. The only official document contained in the record to establish his residency is a Social Security earnings printout with earnings reflected from the year 1962 through the year 1996. Only the years 1962 and 1963 can be accepted as proof of his residence prior to the applicant's birth in 1964.<sup>1</sup>

The record also contains affidavits from friends and acquaintances of Mr. [REDACTED] attesting to his residence in the U.S. Several indicate that he was living in Lovington, New Mexico from 1959 to 1965. One affiant states that Mr. [REDACTED] was working on his farm in Dell City, Texas from 1955 to 1959. Another states that he worked with Mr. [REDACTED] in Dell City from 1956 to 1959 when they both moved to Lovington, New Mexico.

All of the affidavits give generalized timelines and provide no specific information on which months the applicant resided with and/or worked with the affiants. For that reason, it is not possible to determine conclusively that Mr. [REDACTED] resided in the U.S. for the required period of time. At best, using the information provided and lacking any supporting documentation, it may be determined that Mr. [REDACTED] resided in the U.S. for nine years prior to the applicant's birth, from some time in 1955 to the applicant's birth in December 1964. The applicant has therefore failed to establish that his father was physically present in the U.S. during the period of time required by section 307(a)(7) of the Act.

Pursuant to 8 C.F.R. 341.2(c), 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 his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

<sup>1</sup> It is noted that the record also contains birth certificates for the applicant's siblings indicating that all were born in the U.S. These certificates cannot be considered evidence of Mr. Cano's residency as the births all took place after the applicant's birth and in any event, do not verify that Mr. Cano was residing in the U.S., only that his children were born in the U.S.