

E-2

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: SAN ANTONIO, TX Date: JUL 13 2004

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the Interim District Director, San Antonio, 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 August 21, 1960, in Tamaulipas, Mexico. The applicant's mother [REDACTED] was born on February 15, 1943, in Zacatecas, Mexico, and she is not a U.S. citizen. The applicant claims that his father was born in California on November 28, 1936, and that he is a U.S. citizen. The record reflects that the applicant's parents married on October 31, 1959, in Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he acquired United States (U.S.) citizenship at birth through his father.

The interim district director (IDD) determined the applicant had failed to establish that his father was born in the U.S. or that his father was a United States citizen. The IDD additionally concluded that the applicant had failed to establish that his 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 his father reached the age of fourteen, as required by section 301 of the Act.

On appeal, counsel asserts that U.S. birth certificate evidence contained in the record establishes that the applicant's father (Mr. Rodarte) was born in California, and that he is a U.S. citizen. Counsel asserts further that Citizenship and Immigration Services (CIS) failed to establish that an alleged parallel Mexican birth certificate is the birth certificate of the applicant's father. Counsel concludes that the weight of the evidence contained in the record establishes that the applicant is entitled to derivative citizenship through his father.

"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 to U.S. citizen parents is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000). The applicant was born in Mexico in 1960, thus the version of section 301 of the Immigration and Nationality 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, 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the amended Act, 8 U.S.C. § 1401(g)) 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 order to establish eligibility for citizenship pursuant to section 301(a)(7) of the former Act, the applicant thus must establish that his father is a U.S. citizen and that he resided in the U.S. for ten years between 1936 and 1960, five years of which occurred after Mr. Rodarte turned fourteen in 1950.

The record contains a copy of a California birth certificate indicating that the applicant's father, [REDACTED], was born in Fresno, California on November 28, 1936. The California birth certificate was registered on May 25, 1994, fifty-seven years after [REDACTED] birth, and the registry was based on information about [REDACTED] birth that was recorded in a 1971 child's birth certificate, as well as on information provided through the Social Security Administration in 1971, and two affidavits written in 1993. The record contains no other evidence to establish that Mr. Rodarte was born in the United States.

The record contains the following evidence indicating that the applicant's father was born in Mexico rather than in California:

An October 31, 1959, marriage certificate issued to [REDACTED] and the applicant's mother in Tamaulipas, Mexico, stating that [REDACTED] nationality is Mexican;

The applicant's birth certificate issued by the State of Tamaulipas, Mexico on September 29, 1960, stating that [REDACTED] s nationality is Mexican;

The Texas birth certificate of the applicant's sister, issued on June 30, 1970, stating that [REDACTED] s place of birth was Mexico.

The 1982, Form I-130, Petition for Alien Relative (Form I-130) application filed on the applicant's behalf by his mother, stating that the applicant's father was born on May 20, 1936, in [REDACTED] s, Mexico;

The record additionally contains a Mexican birth certificate registered in Mexico on May 21, 1936, reflecting that a child named [REDACTED] was born in Villanueva, Zacatecas, Mexico, on April 24, 1936, to [REDACTED]. The AAO notes that the 1959 marriage certificate contained in the record states that the parents of the applicant's father are [REDACTED]. The AAO notes further that the applicant's 1960 birth certificate and the applicant's sister's 1970 birth certificate state that [REDACTED] parents' names are [REDACTED].

The AAO finds that the delayed California birth certificate issued to the applicant's father has no probative value in the present case. The birth certificate was issued fifty-seven years after [REDACTED] actual birth, and it was not created on the basis of any direct documentation or evidence pertaining to [REDACTED] birth. Rather, the birth certificate was issued based on ancillary documentation created thirty-five years after Mr. [REDACTED] birth, and witness affidavits written fifty-seven years after [REDACTED] s birth. Moreover, the record contains numerous material discrepancies pertaining to the citizenship status of the applicant's father. The information on [REDACTED] California birth certificate conflicts with place of birth and citizenship information contained on [REDACTED] marriage certificate, as well as with information contained in the applicant's birth certificate, the birth certificate of the applicant's sister, and in the applicant's Form I-130 immigration application. The existence of a Mexican birth certificate with birth information that coincides with the conflicting information contained in the record casts further doubts on the applicant's claim that Mr. [REDACTED] was born in the United States. The AAO therefore finds that the applicant failed to establish by a

preponderance of the evidence that his father is a U.S. citizen. Accordingly, the AAO finds that the applicant is not eligible for citizenship pursuant to section 301(a)(7) of the Act.¹

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 Act, 8 U.S.C. § 1452. The applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the record also contains no evidence to establish that Mr. Rodarte was physically present in the U.S. prior to the applicant's birth in 1960. Thus even if the applicant had established that his father was a U.S. citizen, he failed to establish that his father met the U.S. physical presence requirements as set forth in section 301(a)(7) of the former Act.