U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JUL 22 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).

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

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DISCUSSION: The application was denied by the District Director, Los Angeles, California, 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 January 28, 1949, in Tijuana, Mexico. The applicant's father, was born a U.S. citizen on September 7, 1920, in Cedar Rapids, Iowa. The applicant's mother, was born in Mexico, and she became a naturalized U.S. citizen on July 3, 1997, when the applicant was forty-eight years old. The applicant's parents married on May 7, 1945, in Mexico. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the NA); 8 U.S.C. § 601(g), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined the applicant had failed to establish that his United States citizen father resided in the United States or its outlying possessions for a period of ten years prior to the applicant's birth, at least five of which were after the age of sixteen. The application was denied accordingly.

On appeal counsel asserts that the district director failed to consider all of the evidence submitted by the applicant, and that the evidence in the record establishes that the applicant's father (Mr. resided in the United States for the requisite time period set forth in section 201(g) of the NA.

"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). Because the applicant was born on January 28, 1949, section 201(g) of the NA applies to his case.

In order for a child born outside of the United States to derive citizenship from one U.S. citizen parent pursuant to section 201(g) of the NA, it must be established that, when the child was born, the U.S. citizen parent resided in the U.S. or its outlying possession for ten years, at least five of which were after the age of sixteen. *See* § 201(g) of the NA. The applicant must therefore establish that his father resided in the U.S for ten years between September 7, 1920 and January 28, 1949, and that five of those years occurred after September 7, 1936, when Mr turned sixteen.

The record contains the following evidence pertaining to Mr U.S. residence between September 7, 1920 and January 28, 1949:

> A birth certificate reflecting that Mr. was born in Cedar Rapids, Iowa on September 7, 1920;
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> Birth certificates reflecting that Mr. siblings were born in the U.S. on the following dates:
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> born on July 31, 1922 in Cedar Rapids, Iowa
> rn on May 4, 1924 in National City, California
> born on February 2, 1926 in National City, California
> born on November 26, 1927 in National City, California.
>
> A National City, California school district letter stating that Mr ttended second grade in National City, and that he resided in National City at the time. The letter does

not provide the dates of attendance at the National City school.

A National City, California school district letter stating that brother, Ignacio, attended first and second grade in National City, and that his last attendance was in June 1931.

A declaration signed by the applicant's mother on February 5, 2001, stating that she met in Mexico in early 1944, and that they married in Mexico in May 1945. The applicant's mother states that lived and worked in the United States until shortly after the applicant's birth when he began residing with her in Tijuana.

A March 1, 2001, declaration signed by brother, (born in Cedar Rapids, Iowa, on April 4, 1919) stating that he and his family lived in the United States most of their lives. states that when he was approximately seventeen years old, he moved to Mexico for ten to fifteen years during the depression and that he lost contact with his family for many years before returning to the U.S. in the early 1940's. states that moved to Mexico for a few years and met and married his wife there, and that lived and worked in the U.S. between the time he married the applicant's mother and the time that the applicant was born in Mexico in 1949.

A February 5, 2001, declaration signed by a family friend stating that worked with her father in 1941,when she was ten years old, and that visited their house in Santa Monica, California, about once a week for about three years. He then left the area and she did not see again until 1971.

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. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the evidence establish that something is probably true.

The AAO finds that the birth certificate and school record evidence presented by the applicant establish that probably resided in the U.S. for a period of ten years from September 7, 1920, until June 1931. Nevertheless, the AAO finds that the three declarations submitted by the applicant fail to establish by a preponderance of the evidence that resided in the U.S. for five years between his sixteenth birthday (on September 7, 1936) and the applicant's birth in Mexico on January 1, 1949.

The AAO notes that the information presented in the applicant's mother's affidavit reflects that she has no personal knowledge of whereabouts during the relevant time period. Moreover, the declaration lacks material details regarding the dates and places that lived in the U.S., and the declaration lacks corroborative evidence or information to demonstrate that resided in the United States after he turned sixteen and prior to the applicant's birth. The information contained in declaration also reflects that he has no personal knowledge of whereabouts from the early 1930s to the early 1940s. In addition, declaration also fails to provide material details regarding the dates and places that lived during the requisite time period and the declaration lacks corroborative evidence or information to substantiate its claims. Likewise, the declaration provided by Irene consists of general statements and lacks material details and corroborative evidence or information to establish when visited her house or to establish when and where resided in the United States.

Accordingly, the AAO finds that the applicant has failed to establish his father resided in the United States for five years between his sixteenth birthday on September 7, 1936, and the applicant's birth on January 28, 1949, as required by section 201(g) of the NA. The applicant has thus failed to establish that he is entitled to derivative U.S. citizenship through his father.

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 his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.