

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy



U.S. Citizenship
and Immigration
Services

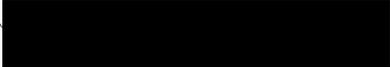
E2



NOV 03 2004

FILE:  Office: DALLAS, TEXAS

Date:

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301 of the former
Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:



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

DISCUSSION: The application was denied by the District Director, Dallas, 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 in Mexico on December 14, 1963. The applicant's father, [REDACTED] was born in Oklahoma on February 19, 1927, and he is a United States citizen. The applicant's mother, [REDACTED] was born in Mexico on October 29, 1928, and she is not a U.S. citizen. The applicant's parents were married on October 4, 1948, 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 U.S. citizenship at birth through his father.

The district director found that the applicant failed to establish that his father (Mr. [REDACTED]) was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after Mr. [REDACTED] reached the age of fourteen, as required by section 301 of the Act. The application was denied accordingly.

On appeal, counsel asserts that the Social Security Earnings and affidavit evidence submitted in the applicant's case establishes that Mr. [REDACTED] was physically present in the United States for the requisite time period set forth in section 301 of the Act. Counsel additionally asserts that the applicant's brother (Jaime [REDACTED]) was granted a certificate of U.S. citizenship based on the evidence presented in the applicant's case, and that it would therefore be unfair and discriminatory to deny the applicant's citizenship application.

The AAO notes that its appellate authority in the present matter extends only to the present application. The AAO will therefore not address issues relating to the approval of the applicant's brother's citizenship application.

"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). The applicant was born on December 14, 1963. Section 301(a)(7) of the former Act is therefore applicable to his derivative citizenship claim.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) 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 case, the applicant must establish that his father was physically present in the U.S. for ten years between February 19, 1927 and December 14, 1963, and that five of those years occurred after February 19, 1941, when Mr. [REDACTED] turned fourteen.

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

The evidence relating to Mr. [REDACTED] physical presence in the United States during the requisite time period consists of the following:

An Oklahoma birth certificate reflecting that Mr. [REDACTED] was born in Oklahoma on February 19, 1927.

A baptismal certificate indicating that Mr. [REDACTED] was baptized at the Guardian Angel Church in El Paso, Texas on August 26, 1928. (The AAO notes that the certificate contains an incorrect birth year for Mr. [REDACTED])

Social Security Earnings statements indicating that Mr. [REDACTED] earned the following amounts in the U.S. between 1946 and 1963:

- \$175.50 in 1946,
- \$506.56 in 1947,
- \$38.40 in 1948,
- \$20.40 in 1949,
- \$37.40 in 1950,
- \$4.00 in 1951,
- \$57.00 in 1952,
- \$11.00 in 1953,
- \$0.00 between 1954 and 1962,
- \$2160.00 in 1963.

A Selective Service registration card dated July 18, 1946, indicating that Mr. [REDACTED] resided in El Paso, Texas.

An affidavit dated February 26, 2001, written by Mr. [REDACTED] indicating that he lived in the U.S. until he married in 1948, and that after his marriage he lived part of the year in Mexico, but continued to work in the United States.

The AAO notes that the record contains the following evidence relating to Mr. [REDACTED] physical presence in Mexico during the requisite time period:

A U.S. Border Crossing card issued to Mr. [REDACTED] on November 27, 1946, reflecting that Mr. Lara resided in Mexico.

A Selective Service registration card dated July 24, 1948, reflecting that Mr. [REDACTED] resided in Mexico.

Mr. [REDACTED] marriage certificate dated October 4, 1948, reflecting that Mr. [REDACTED] resided in Mexico.

The applicant's December 14, 1963, birth certificate reflecting that Mr. [REDACTED] resided in Mexico.

The AAO finds that the birth and baptismal certificates submitted by the applicant establish by a preponderance of the evidence that Mr. [REDACTED] was physically present in the United States between 1927 and 1928. The AAO finds, however, that the record contains no documentary evidence to establish that Mr. Lara resided in the U.S. subsequent to those dates.

The AAO finds that the Social Security earnings evidence submitted by the applicant fails to establish that

Mr. [REDACTED] worked or resided in the U.S. for the requisite time period set forth in section 301(a)(7) of the Act. The earnings statements contain no address information for Mr. [REDACTED] and the yearly amounts of Mr. [REDACTED] earnings do not suggest that he worked in the U.S. for the entire year periods between 1946 and 1963. In addition, the Selective Service registration information, as well as the information on Mr. [REDACTED] Border Crossing card, marriage certificate and the applicant's birth certificate contradict the assertion that Mr. [REDACTED] resided in the U.S. between 1946 and 1963.

The AAO finds further that the affidavit written by Mr. [REDACTED] is unsupported by any corroborative evidence and that it lacks material information and details regarding specific dates of residence or addresses of places that Mr. [REDACTED] resided in the United States.

The AAO therefore finds that the applicant failed to establish that his father resided in the U.S. for ten years, at least five of which were after the age of fourteen years old.

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 failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.