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

[Redacted]

FILE:

[Redacted]

Office: EL PASO, TEXAS

Date: OCT 07 2014

IN RE:

Applicant:

[Redacted]

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:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the 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 November 12, 1954, in Juarez, Chihuahua, Mexico. The applicant's father, [REDACTED] was born in New Mexico on June 14, 1927, and he is a United States citizen. The applicant's mother was born in Mexico and she was not a U.S. citizen. The applicant's parents were married on October 4, 1946, in Durango, 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 she acquired U.S. citizenship at birth through her father.

The district director found the applicant had failed to establish that her father was physically present in the United States for ten years prior to her birth, at least five years of which occurred after the applicant reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts that the evidence contained in the record establishes the applicant's father (Mr. [REDACTED]) was physically present in the United States for the requisite time period under section 301 of the Act.

"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 in this case was born in Mexico in 1954. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls her claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See § 301(a)(7) of the former Act.*

In *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that her father was physically present in the U.S. for ten years between June 14, 1927 and November 12, 1954, and that five of those years were after June 14, 1941, when her father turned fourteen.

The evidence pertaining to Mr. [REDACTED] physical presence in the United States between June 14, 1927 and November 12, 1954, consists of the following documents:

A New Mexico birth certificate reflecting that Mr. [REDACTED] was born in New Mexico on June 14, 1927.

A baptism certificate issued on April 16, 2003, indicating that Mr. [REDACTED] was baptized at San Albino Church in Mesilla, New Mexico on December 28, 1927. (The AAO notes that the Baptism certificate states that Mr. [REDACTED] birthday is October 14, 1927 rather than June 24, 1927.)

A Social Security Administration summary earnings statement reflecting that Mr. [REDACTED] earned the following amounts between 1951 and 1954:

1951 - \$1820.52
1952 - \$1244.38
1953 - \$2111.59
1954 - \$2191.45

An affidavit dated January 16, 2004, written by the applicant's father stating that he resided in New Mexico until 1932 when he moved to Juarez, Chihuahua with his mother and siblings. Mr. [REDACTED] states that he lived in Juarez until 1951, when he obtained a job in El Paso. Mr. [REDACTED] also states that between 1948 and 1951 he worked in the fields and shared an apartment with [REDACTED] in the U.S. during the week and that he spent weekends with his family in Juarez. He additionally states that he married his wife in 1946 in Juarez, and that they lived in El Paso, Texas, although she gave birth to their nine children in Juarez, Mexico.

An affidavit dated January 15, 2004, written by [REDACTED] stating that he met Mr. [REDACTED] in February 1948, and that Mr. [REDACTED] shared an apartment with him. Mr. [REDACTED] additionally states that he worked as an agricultural worker with Mr. [REDACTED] and shared good times with him between 1948 and 1951.

An affidavit dated January 15, 2004, written by [REDACTED] stating that he met Mr. [REDACTED] in February 1948 and worked as an agricultural worker with Mr. [REDACTED] and shared good times with him between 1948 and 1951.

An affidavit dated January 15, 2004, written by [REDACTED] stating that he met Mr. [REDACTED] in February 1948 and worked as an agricultural worker with Mr. [REDACTED] and shared good times with him between 1948 and 1951.

An affidavit dated January 15, 2004, written by [REDACTED] stating that he met Mr. [REDACTED] in February 1948 and worked as an agricultural worker with Mr. [REDACTED] and shared good times with him between 1948 and 1951.

An affidavit dated May 20, 2003, written by Mr. [REDACTED] sister [REDACTED] born in New Mexico on December 1, 1925), stating that their family lived in New Mexico until 1932 when they moved to Mexico. The affidavit additionally states that between 1948 and 1951, Mr. [REDACTED] worked and lived in El Paso, Texas on weekdays and that he spent his weekends in Juarez, Mexico.

An affidavit dated November 17, 2002, written by Mr. [REDACTED] mother, [REDACTED] [REDACTED] stating that her three children were born while she lived in the U.S. between 1925 and 1932. She states that she moved with her family to Mexico in 1932, and that Mr. [REDACTED] returned to the U.S. in 1951, and has worked and lived with his wife in the U.S. since that time.

A delayed issued birth certificate reflecting that Mr. [REDACTED] brother [REDACTED] was born in New Mexico to Mr. [REDACTED] parents on July 31, 1929.

The AAO finds that Mr. [REDACTED] birth certificate and baptismal certificate establish that the applicant's father is a U.S. citizen and that he was physically present in the U.S. in 1927. The AAO finds, however, that the affidavits and employment evidence submitted on appeal do not establish Mr. [REDACTED] physical presence in the U.S. after 1927.

The AAO notes that the affidavit written by Mr. [REDACTED] is vague and contains conflicting information regarding the years that he resided in the United States. Moreover, the affidavits written by Mr. [REDACTED] co-workers and sister lack basic and material details about the exact dates and places that Mr. [REDACTED] resided in the United States, and the affidavits lack material details regarding the source of the affiants' knowledge of Mr. [REDACTED] residence in the United States between 1948 and 1951, and after 1951. Furthermore, these affidavits conflict with information contained in Mr. [REDACTED] mother's affidavit which states that Mr. [REDACTED] did not move to the U.S. until 1951. The AAO notes that none of the affidavits contain evidence or information to corroborate their claims, and the record contains no corroborating evidence to establish that Mr. [REDACTED] rented or leased a home in the United States. In addition, the AAO notes that although the Social Security Earnings information submitted by the applicant establishes that Mr. [REDACTED] worked in the United States between 1951 and 1957, it does not reflect the dates that he worked, or that he resided in the United States during those years.

The AAO finds that the applicant has failed to establish her father was physically present in the United States for the requisite time period. The applicant has therefore failed to establish that she is entitled to derivative U.S. citizenship pursuant to section 301(a)(7) of the former Act.

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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.