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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: EL PASO, TEXAS

Date: 07/27/04

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, 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 August 16, 1953, in Chihuahua, Mexico. The applicant's father [REDACTED] was born in Texas on September 27, 1914, and he was a United States citizen. The applicant's mother, [REDACTED] was born in Mexico, and she is not a U.S. citizen. The applicant's parents married on May 24, 1942, in Chihuahua, 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 evidence submitted by the applicant failed to establish that his father was physically present in the United States for ten years prior to the applicant's birth, at least five years of which were after the applicant's father reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts that the evidence submitted in the applicant's case, establishes by a preponderance of the evidence that the applicant's father (Mr. [REDACTED]) was physically present in the United States for the requisite time period set forth under section 301 of the former 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 was born on August 16, 1953. 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.

The definition of "physical presence" was addressed by the Board of Immigration Appeals (Board) in *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962). The Board determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States.

The AAO finds that the birth certificate evidence contained in the record establishes that Mr. [REDACTED] was born a U.S. citizen on September 27, 1914. The applicant must thus establish that Mr. [REDACTED] was physically present in the U.S. for ten years between September 27, 1914 and August 16, 1953, and that five of those years occurred after September 27, 1928.

The record contains the following evidence relating to Mr. [REDACTED] physical presence in the U.S. between September 27, 1914 and August 16, 1953:

A Texas birth certificate reflecting that Mr. [REDACTED] was born in Fortin, Texas on September 27, 1914.

A baptismal certificate reflecting that Mr. [REDACTED] was baptized at St. Mary's Church in

Marfa, Texas on March 23, 1915.

A marriage certificate reflecting that Mr. [REDACTED] married his wife in Mexico on May 24, 1942, and that Mr. [REDACTED] resided in Chihuahua, Mexico at that time.

A delayed issued birth certificate reflecting that the applicant's brother [REDACTED] was born in Texas to Mr. [REDACTED] parents on June 23, 1917.

A delayed issued birth certificate reflecting that the applicant's sister [REDACTED] was born in Texas to Mr. [REDACTED] parents on February 6, 1921.

A delayed issued birth certificate reflecting that the applicant's sister [REDACTED] was born in Texas to Mr. [REDACTED] parents on December 22, 1922.

A Selective Service registration record reflecting that Mr. [REDACTED] registered for the Selective Service on April 25, 1946. Mr. [REDACTED] listed his address as: c/o [REDACTED] [REDACTED]. The registration record reflects that [REDACTED] was the applicant's employer.

A January 17, 2002, letter signed by [REDACTED] wife of [REDACTED] stating that Mr. [REDACTED] was employed by [REDACTED] in 1941, and that he worked on the [REDACTED] Ranch, fifty miles south of Marfa in Presidio County for many years.

A March 28, 2002 letter signed by [REDACTED] wife of [REDACTED] stating that Mr. [REDACTED] worked for [REDACTED] on the [REDACTED] Ranch 60 miles south of Marfa, Texas from 1941 to 1960.

The AAO notes that the information contained on Mr. [REDACTED] marriage certificate indicates that he resided in Chihuahua, Mexico when he married in May 1942. The AAO notes further that the January 17th and March 28, 2002, letters from [REDACTED] are unsupported by any corroborative evidence, and that they lack material details regarding the exact dates that Mr. [REDACTED] worked for [REDACTED]. Moreover, the AAO notes that the letters do not discuss where Mr. [REDACTED] lived while he worked at the [REDACTED] Ranch, nor do they provide information regarding the frequency and level of contact between the affiants and Mr. [REDACTED]. The AAO therefore finds that the letters lack probative value and that they fail to establish that Mr. [REDACTED] resided in the U.S. at any time between 1941 and 1960.

In addition, the AAO notes that Mr. [REDACTED] did not list a physical address on his Selective Service registration form, and the AAO finds that providing his employer's name and P.O. Box address as a point of contact does not in any way establish that Mr. [REDACTED] was residing in the U.S. when he registered for the Selective Service in 1946.

The AAO finds that the remaining evidence contained in the record relates to Mr. [REDACTED] physical presence in the United States either prior to his fourteenth birthday or subsequent to the applicant's birth. The applicant has therefore failed to establish that his father met the section 301(a)(7) of the former Act requirement that he be physically present in the U.S. for at least five years after the age of fourteen and prior to the applicant's birth.

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 in the present case has failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.