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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

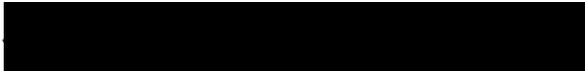


Office: SAN DIEGO, CA

Date: OCT 22 2004

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 301 of the 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, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 26, 1971, in Tijuana, Mexico. The applicant's father, [REDACTED] was born in Yuba City, California on November 19, 1951, and he was a United States (U.S.) citizen. The applicant's mother, [REDACTED] was born in Mexico and she is not a U.S. citizen. The applicant's parents married on October 16, 1967, in Tijuana, 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 concluded the applicant had failed to establish that his father was physically present in the United States for at least ten years prior to the applicant's birth, five years of which occurred after the applicant's father turned fourteen. The application was denied accordingly.

Counsel asserts on appeal, that existing and new evidence demonstrates that the applicant qualifies for U.S. citizenship pursuant to 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 was born in Mexico in 1971. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.

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 November 19, 1951 and October 26, 1976, and that 5 of those years occurred after November 19, 1965, when his father turned fourteen. The record contains the following evidence pertaining to the applicant's father's [REDACTED] physical presence in the United States during the requisite time period:

A California birth certificate reflecting that [REDACTED] was born in Yuba City, California on November 19, 1951.

A baptismal certificate reflecting that [REDACTED] was baptized at the St. Joseph Catholic Church in Yuba City, California on July 19, 1952.

A Social Security summary earnings statement reflecting that [REDACTED] earned the following amounts between 1964 and 1971:

1964 - \$171.90
1965 - \$1564.44

1966 - \$628.00
1967 - \$229.75
1968 - \$233.82
1969 - \$1659.53
1970 - \$2691.67
1971 - \$1275.54

A declaration signed by [REDACTED] mother on October 1, 2002 indicating that Mr. [REDACTED] lived in California most of his life, and that he continued to reside in the U.S. after their marriage in 1967.

A November 9, 1972, Probation Officer's Report, reflecting the following employment history for [REDACTED]

Part-time restaurant work for [REDACTED] in Del Mar, California between 1964 and 1965;

Seasonal farm labor work for [REDACTED] in Oroville, California between 1966 and 1970;

Farm labor work for Heidrick Farms in Woodland, California between July 1971 and September 1971;

On and off farm labor work for Max Coronado in Yolo County between September 1971 and September 1972, when [REDACTED] was arrested.

October 18, 1974 Correctional Facility, Custodial Evaluation indicating that Mr. [REDACTED] spent several years of his childhood in Baja, California, Mexico City and periods of time in Northern and Central California. (See page 5).

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 proof establish that something is probably true

The AAO finds that the evidence contained in the record establishes that it is probably true that [REDACTED] was physically present in the United States for two years between 1951 and 1952, and for eight years between 1964 and 1971, and that five of the years occurred after his father turned fourteen in 1965 and prior to the applicant's birth in October 1971. Accordingly, the applicant has established by a preponderance of the evidence that he qualifies for U.S. citizenship under section 301(a)(7) of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.