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

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APR 11 2005

FILE: [Redacted] Office: MARLINGEN, TX Date:

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, 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 October 13, 1945. The applicant's mother, [REDACTED] was born in Big Foot, Texas on October 15, 1922, and she was a United States (U.S.) citizen. The applicant's father, [REDACTED] was born in Mexico, and he was not a U.S. citizen. The applicant's parents were married on August 18, 1938, in Mexico. The applicant seeks a certificate of citizenship pursuant to section 201(g) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(g), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director determined the applicant had failed to establish that his mother [REDACTED] resided in the United States for the requisite time period set forth in section 201(g) of the Nationality Act. The application was denied accordingly.

On appeal, the applicant asserts that all of his siblings have derived U.S. citizenship through his mother, and that he is also entitled to derivative citizenship through his mother.

"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 October 13, 1945. Section 201(g) of the Nationality Act is therefore applicable to his derivative citizenship claim.

Section 201(g) of the Nationality Act provides citizenship, in pertinent part, to:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years.

The evidence in the record pertaining to [REDACTED] residence in the United States between October 15, 1922 and October 13, 1945 consists of the following:

A birth certificate reflecting that [REDACTED] was born in Texas on October 15, 1922.

A copy of [REDACTED] (born in Mexico, May 1, 1938) U.S. Immigration and Naturalization Service (INS, now U.S. Citizenship and Immigration Services, CIS) identification card for use by resident citizens of the United States, issued on January 14, 1961.

A copy of [REDACTED] (born in Mexico, October 16, 1940) INS identification card for use by resident citizens of the United States, issued on September 13, 1958.

A copy of Francisco [REDACTED] (born in Mexico, July 15, 1954) Certificate of Citizenship, issued on August 19, 1976.

A copy of [REDACTED] (born December 8, 1942) U.S. Resident Alien card, issued on an unknown date.

The applicant asserts that [REDACTED] are his siblings.

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 establishes that something is probably true.

The AAO finds that [REDACTED] birth certificate establishes by a preponderance of the evidence that she resided in the United States in October 1922. However, the AAO finds that the sibling citizenship and resident alien documentation submitted by the applicant does not, in and of itself, establish by a preponderance of the evidence that [REDACTED] resided in the United States after 1922. The AAO notes that the record contains no information or evidence to establish the basis upon which the applicant's siblings obtained their citizenship. The record also lacks evidence relating to the residence evidence presented by the applicant's siblings. The record additionally lacks evidence to establish the applicant's familial relationship to the above-mentioned individuals, and the record contains no other evidence to corroborate the applicant's claim that his mother resided in the United States for the requisite time period set forth in section 201(g) of the Nationality Act.

Accordingly, the AAO finds that the applicant has failed to establish that [REDACTED] resided in the United States for ten years, at least five of which were after the age of sixteen years old, as required by section 201(g) of the Nationality Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.