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U.S. Citizenship
and Immigration
Services



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FILE:



Office: CHICAGO, ILLINOIS

Date:

APR 14 2005

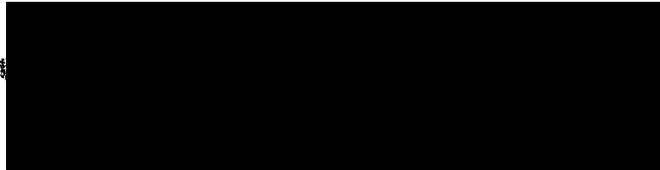
IN RE:



APPLICATION:

Application for Certificate of Citizenship under Section 301(a)(7) of the former
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.

[Handwritten signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, 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 7, 1960 in Mexico. The applicant's mother, [REDACTED] was born on August 11, 1922 in Mexico, and she was not a United States (U.S.) citizen. The applicant's father, [REDACTED] was born on August 17, 1919, and he was a U.S. citizen. The applicant's parents married on October 31, 1938. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The director concluded that the applicant established that his father was physically present in the United States for four years prior to the applicant's birth but did not establish that his father was physically present in the United States for a total of ten years prior to the applicant's birth as required by section 301(g) (sic) of the former Act. The application was denied accordingly. *Decision of the District Director, Chicago, Illinois*, dated May 7, 2001.

On appeal, counsel contends that the applicant's U.S. citizen father clearly met the residency requirement in order to confer derivative citizenship to the applicant. Counsel additionally asserts that the director's decision is incorrect because according to *Matter of Tijerina-Villereal*, 13 I & N Dec. 327 (BIA, 1969), the burden is on the Service, not the applicant, once the claim of citizenship is made.

At the outset, the AAO notes that *Matter of Tijerina-Villereal* does not support counsel's contention that the burden of proof is on the Service. In *Matter of Tijerina-Villereal*, the Board stated:

The burden to establish alienage in a deportation proceeding is upon the Government. When there is a claim of citizenship, however, one born abroad is presumed to be an alien and must go forward with the evidence to establish his claim to United States citizenship. (citations omitted)

The issue here is whether the respondent has presented a preponderance of credible evidence sufficient to overcome the presumption of alienage which attaches by reason of his birth in Mexico.

In the present case, the applicant was born in Mexico but claims to have acquired derivative citizenship through his United States citizen father. Accordingly, it is the applicant's burden to establish by a preponderance of credible evidence that he is a United States citizen.

"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 the present matter was born in 1960. Section 301(a)(7) of the former Act therefore applies to the present case.

Section 301(a)(7) of the former Act 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 United States for ten years between his birth on August 17, 1919 and the applicant's birth on November 7, 1960. Five of those years must be after August 13, 1933, when the applicant's father turned fourteen years of age.

In support of the Application for Certificate of Citizenship (N-600), counsel submitted the following documents to support the claim that prior to the applicant's birth, his father was physically present in the United States for longer than ten years, at least five of which were after attaining the age of fourteen years:

- 1) An April 13, 2000 affidavit from the applicant's father, [REDACTED] in which he stated that from January 1, 1933 until November 7, 1960, he worked, lived and established his permanent residence in Texas. [REDACTED] indicated that he lived for most of this period in San Antonio with his brother, [REDACTED]. [REDACTED] further stated that he made brief trips to Mexico.
- 2) An April 3, 2000 affidavit from [REDACTED] s nephew, [REDACTED] in which he stated that [REDACTED] lived at [REDACTED] while he worked during crop season on side jobs during the period of 1937-1959.
- 3) An April 3, 2000 affidavit from [REDACTED] the uncle of [REDACTED] s former wife, [REDACTED], who stated that [REDACTED] lived in San Antonio from 1937-1959 with his brother, [REDACTED]. [REDACTED] further stated that he and [REDACTED] worked together during crop season, and that [REDACTED] worked part-time for Antonio's Rivera Steel Construction Company in Poteet, Texas during 1959.
- 4) An April 3, 2000 affidavit from [REDACTED] who stated that he was [REDACTED] neighbor in San Antonio since 1954, and that he worked with [REDACTED] during crop season.
- 5) A September 26, 1994 affidavit from [REDACTED] former wife, [REDACTED] who stated that [REDACTED] lived in San Antonio with his uncle, [REDACTED] after 1941. [REDACTED] further indicated that [REDACTED] traveled to California when the work was slow in Texas.
- 6) A September 26, 1994 affidavit from [REDACTED] s son, [REDACTED] in which he stated that [REDACTED] worked as a farm laborer in San Antonio, where he lived with his uncle, [REDACTED] at [REDACTED]. [REDACTED] Jr. also indicated that [REDACTED] traveled to Delano, California as a farm laborer in the late 1950s.
- 7) An April 2, 1993 affidavit from [REDACTED] s nephew, [REDACTED] who stated that [REDACTED] lived in [REDACTED] from 1940-1950.
- 8) An April 2, 1993 affidavit from a friend of [REDACTED] s, [REDACTED] [REDACTED] from above), who stated that he lived at [REDACTED] in San Antonio, that he and [REDACTED] were neighbors, and that [REDACTED] lived in San Antonio from 1940-1950.
- 9) A Social Security Administration earnings statement for [REDACTED] covering the years 1958-1964.
- 10) A San Antonio Elementary Schools permanent record card for [REDACTED] a covering the years 1930-1931.

earnings statement and permanent record card establish that he lived in the United States for approximately five years (1930, 1931, 1958, 1959, and ten months in 1960) prior to the birth of the applicant on November 7, 1960.

The affidavits submitted by counsel do not establish that the applicant's father lived an additional five years in the United States. The affidavits contain vague information regarding the time periods that worked in the United States. The affidavits do not specify the time of the year, the length of time each year, or the frequency from year-to-year, of the farm work performed by

Additionally, the affidavits contain inconsistent information. First, stated that he worked and lived in San Antonio from 1933-1960 and that he made brief trips to Mexico. None of the other affidavits indicate that began living in San Antonio in 1933 or that he made brief trips to Mexico. Second, makes no reference to working in California; however, both Ms. and Mr. Jr. stated that Mr. sometimes worked in California. Third, Ms. indicated that Mr. lived in San Antonio with his uncle, while Mr. stated that he lived in San Antonio with his brother. Fourth, the dates in the affidavits are not consistent. Mr. stated that he lived in San Antonio from 1933-1960. Ms. stated that Mr. lived in San Antonio after 1941, but provides no ending date. Mr. Jr. provided no dates of when Mr. lived in San Antonio. Mr.'s nephew stated in his April 3, 2000 affidavit that Mr. lived in San Antonio from 1937-1959. In his April 2, 1993 affidavit, Mr.'s nephew stated that Mr. lived in San Antonio from 1940-1950. In his April 3, 2000 affidavit, Mr. stated that he was Mr.'s neighbor in San Antonio after 1954. In his April 2, 1993 affidavit, Mr. stated that he and Mr. were neighbors and that Mr. lived in San Antonio from 1940-1950. Mr. stated in his affidavit that Mr. worked for a steel construction company in 1959; none of the other affidavits make reference to this employment.

The vagueness of the information in the affidavits, and the inconsistencies between the affidavits, raise doubts about the period of time that Mr. lived in the United States. Accordingly, the AAO finds that counsel has not established that Mr. was physically present in the United States for at least ten years, at least five of which were after attaining the age of fourteen, prior to the applicant's birth.

The record contains a photocopy of a United States passport, number issued to the applicant on August 24, 2004, with an expiration date of August 23, 2014. According to *Black's Law Dictionary*, 7th Edition, a document is "void on its face", or "facially void", when it is "patently void upon inspection of its contents." The AAO notes that if the applicant's passport is not "void on its face", and is, instead, a valid U.S. passport issued to the applicant as a citizen of the United States, the Immigration and Naturalization Service (Service, now Citizenship and Immigration Service, CIS) has no authority to go behind the DOS decision to grant the passport or to otherwise attempt to collaterally attack the validity of the passport or the applicant's citizenship. See *Matter of Villanueva*, supra. See also, *Matter of Madrigal-Calvo*, 21 I&N Dec. 323 (BIA 1996) and *Okabe v. INS*, 671 F.2d 863 (5th cir. 1982).

The AAO finds that the record contains no evidence to indicate that the applicant's passport was invalid when it was issued to the applicant, and the record contains no other evidence to indicate that the applicant's passport is "void on its face".

22 U.S.C. § 2705 states, in pertinent part, that:

The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

- (1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

The applicant's passport had not been issued at the time of the director's decision. The director properly denied the application based on the evidence. Accordingly, as the AAO did not find that the applicant's father resided in the United States for the appropriate period of time, the applicant's appeal will be dismissed.

The AAO notes that this is without prejudice to the filing of a new Application for Certificate of Citizenship with the passport submitted as proof of United States citizenship.

ORDER: The appeal is dismissed.