



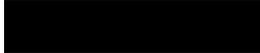
U.S. Citizenship
and Immigration
Services

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FILE:



Office: EL PASO, TEXAS

Date:

DEC 23 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED¹

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

¹ The AAO notes that counsel, Tilman Hasche, withdrew as the applicant's attorney of record on November 8, 2004.

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 applicant's birth certificate reflects that [REDACTED] was born in Mexico on August 31, 1957, and that he is the legitimate son of [REDACTED] (mother) and [REDACTED] (father), both Mexican citizens. The record contains a Mexican adoption decree reflecting that the applicant was legally adopted in Mexico on December 2, 1969, by [REDACTED] and that at that time, the applicant's name was changed to, [REDACTED]. The record contains the applicant's 1971 U.S. Immigrant Visa petition reflecting that the applicant's mother is [REDACTED] and that his adoptive father is [REDACTED]. Based on the immigrant visa petition filed by his adoptive father, the applicant obtained a U.S. immigrant visa on August 18, 1971, under the name, [REDACTED]."

The applicant presently 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) (now known as section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)). The applicant claims that his biological father was [REDACTED] a U.S. citizen, and that his biological mother is [REDACTED] a Mexican citizen. The applicant claims that he was born to his biological parents in Mexico on March 8, 1957, under the name, [REDACTED]. Accordingly, the applicant claims he derived U.S. citizenship at birth through his biological father.

The district director determined the applicant had failed to establish by a preponderance of the evidence that he and [REDACTED] are the same person. The district director determined further that the applicant failed to establish that [REDACTED] was his biological father. In addition, the district director determined that, even if the applicant had established that [REDACTED] was his father, the applicant had also failed to demonstrate that [REDACTED] was physically present in the United States or its outlying possessions for a period of ten years prior to the applicant's birth, at least five years of which were after [REDACTED] reached the age of fourteen. The application was denied accordingly.

The applicant asserts on appeal that DNA evidence cannot be obtained for [REDACTED] because he is deceased. The applicant asserts, however, that DNA test results establish [REDACTED] wife, [REDACTED] has a 97.80% chance of being the applicant's biological mother. The applicant asserts that birth certificate evidence and an affidavit written by [REDACTED] establish that a child, [REDACTED] was born to [REDACTED] in Mexico on March 8, 1957. The applicant additionally asserts that an affidavit by [REDACTED] establishes that [REDACTED] was [REDACTED] cousin, that she took care of the applicant when he was an infant, and that she later disappeared with the applicant without his biological parents' permission. The applicant asserts the evidence in the record establishes that his biological father, [REDACTED] was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. The applicant concludes that he is therefore entitled to a certificate of citizenship based on his biological relationship to [REDACTED].

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.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be upon the claimant to establish his or her 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 evidence establish that something is probably true.

The record contains the following evidence pertaining to the applicant's identity, pertaining to (status as a U.S. citizen, and pertaining to the applicant's biological relationship to Mr.

A Mexican Birth Certificate registered on March 23, 1959, reflecting that was born in Chihuahua, Mexico on August 31, 1957, and that he is the legitimate child of (mother) and (father).

A Mexican Adoption Decree reflecting that was legally adopted by on December 2, 1969, and that name was changed to “

An “Immigrant Visa and Alien Registration” form, reflecting that “” was admitted into the United States as a lawful permanent resident on August 18, 1971, based on a visa petition filed by his adoptive father.

An affidavit signed by on December 3, 1997, stating in pertinent part that she is the legal and biological mother of “” also known as “” states that her U.S. citizen husband passed away on February 14, 1997, and that he was the legal and biological father of the applicant. states further that was born in Mexico on March 8, 1957, that he became ill soon after his birth, and that one of her husband's cousins, offered to help with the applicant's medical needs. states that she and her husband and older children returned to the United States in late 1957, but that they temporarily left the applicant with e to their circumstances and because they did not know he was a U.S. citizen. and her husband wrote to in January 1959, indicating their desire to bring the applicant to the United States, however did not respond to their letters and in 1970, wrote a letter asking not to contact her again. states that she and her husband ceased their efforts to contact but that her other children became curious about the applicant and in July 1995, she, her husband and two of her daughters traveled to Mexico and were able to contact someone who knew phone number. states that she subsequently phoned who lived with the applicant in Sunland Park, New Mexico, and that she, her husband and two daughters traveled back to the U.S. to meet the applicant, who then learned for the first time who his biological parents were, based on the birth and

baptismal certificates [REDACTED] showed him and based on [REDACTED] and her husband's recounting of his birth and early childhood.

A Mexican birth certificate, registered on March 29, 1957, reflecting that "[REDACTED]" was born on March 8, 1957 to [REDACTED]

A Certificate of Baptism reflecting that "[REDACTED]" born March 8, 1957, and son of [REDACTED] was baptized on May 12, 1957 at the Parish of San Juan de Matta, Allende, Coah., Mexico.

A copy of Mexican Civil Code, Chapter II, Article 63, stating that where:

[A] child is born to a married woman who resides with her husband, a judge of the Civil Registry may in no event record as the father of the child anyone else but the husband, unless he has disowned the child as his and a final judgment so adjudicates.

A Mexican marriage certificate reflecting that [REDACTED] married in Villa de Morelos, Coahuila on January 17, 1953.

A marriage certificate reflecting that [REDACTED] were married at the Sacred Heart Church in Uvalde, Texas on October 3, 1954.

An Oregon Certificate of Death reflecting that [REDACTED] died on February 14, 1997.

January 8, 2002 results from American Red Cross blood tests between [REDACTED] and [REDACTED] stating that [REDACTED] cannot be excluded as the mother of [REDACTED] that the combined maternity index is 44.51, that [REDACTED] has a 44.51 times greater chance of maternity than an unrelated woman of the same race, and that the relative chance of maternity, assuming a 50% prior chance, is 97.80%.

Based on the above evidence, the AAO finds that the applicant has established that [REDACTED] was a U.S. citizen. The AAO finds, however, that the applicant has failed to establish by a preponderance of the evidence that he is [REDACTED] is his biological father and that he is the child of a U.S. citizen as set forth in section 301(a)(7) of the former Act.

The AAO notes that the record contains no evidence to indicate that [REDACTED] birth certificate is fraudulent, and the record reflects that [REDACTED] son of [REDACTED] was adopted by [REDACTED] pursuant to legal court proceedings. The record additionally reflects that the applicant legally immigrated to the United States based on his birth certificate and his legal status as the child of [REDACTED]. Although assertions are made on appeal that [REDACTED] appeared with the applicant without his biological parents' permission, the assertions are uncorroborated by any evidence in the record. The record contains no indication that [REDACTED] filed a missing person's report or at any time initiated a criminal, legal or other complaint against [REDACTED] and the AAO notes that although the

evidence establishes that [REDACTED] had a child on March 8, 1957, named [REDACTED]. [REDACTED] affidavit is the only evidence submitted to establish the assertion that "Jose [REDACTED] is the same person as [REDACTED]"

The AAO notes that the applicant's previous attorney of record's, Form G-28, "Notice of Entry of Appearance as Attorney or Representative" reflects that the applicant presently resides with [REDACTED] (presumably also known as [REDACTED] whereabouts therefore appear to be known. However, the record contains no DNA evidence from [REDACTED] regarding her probability of maternity over the applicant. The record additionally lacks affidavit evidence from [REDACTED] to corroborate [REDACTED] assertions. The AAO notes further that the DNA evidence results indicating that Ms. [REDACTED] has a 97.80% relative chance of maternity over the applicant are not conclusive. Moreover, the AAO notes that even if it accepts that [REDACTED] is the applicant's biological mother, this would not establish when the applicant was born, that [REDACTED] is the applicant's biological father, or that [REDACTED] is also [REDACTED]

Furthermore, the AAO finds that even if the applicant had established that [REDACTED] was his biological father and that [REDACTED] and "[REDACTED]" are the same person, the evidence contained in the record nevertheless fails to establish, by a preponderance of the evidence that Mr. [REDACTED] was physically present in the United States for ten years prior to [REDACTED]'s birth, at least five years of which occurred after [REDACTED] turned fourteen.

The record contains the following evidence relating to [REDACTED] physical presence in the U.S. between November 29, 1929 and March 8, 1957:

A California Birth certificate reflecting that [REDACTED] was born in Seeley, California on November 29, 1929, to [REDACTED] (mother) and [REDACTED] (father).

A Certificate of Baptism reflecting that [REDACTED] was baptized at the Guardian Angel Church in El Paso, Texas on July 13, 1930.

A Certificate of Confirmation, reflecting that [REDACTED] received a Sacrament of Confirmation at the Church of Guardian Angel in El Paso, Texas on September 28, 1930.

An April 7, 1998, letter from the U.S. Census Bureau reflecting that [REDACTED] mother, [REDACTED] was recorded in the April 1, 1930 Census, as living at [REDACTED] Campbell, El Paso Texas.

1931, 1932, 1933, 1934 and 1935, El Paso, City Directory excerpts reflecting that [REDACTED]

An affidavit signed by [REDACTED] on March 24, 1998, stating that he is [REDACTED] cousin and that he knew her to be living in El Paso, Texas from early 1930 until sometime in 1935, when she and her husband moved to Mexico with their son, [REDACTED]

A Social Security Account Number Application signed on June 21, 1948 by [REDACTED] reflecting a [REDACTED] Mexico mailing address.

A U.S. Selective Service Registration Card signed by Mr. Ramos on January 5, 1952, reflecting that he resided in Allende, Coah., Mexico.

A marriage certificate reflecting that [REDACTED] on January 17, 1953 in Coahuila, Mexico.

An "Application for Immigrant Visa and Alien Registration" form filed by [REDACTED] on August 5, 1953, reflecting that she sought to join her husband who resided in Uvalde, Texas.

A Texas birth certificate reflecting that [REDACTED] as born in Uvalde, Texas to Mr. and [REDACTED] on April 20, 1954.

A Certificate of Baptism reflecting that [REDACTED] was baptized at the Sacred Heart Church in Uvalde, Texas on June 5, 1954.

A Texas birth certificate reflecting that [REDACTED] was born in Uvalde, Texas to Mr. and [REDACTED] on June 19, 1955.

A Certificate of Baptism reflecting that [REDACTED] was baptized at the Sacred Heart Church in Uvalde, Texas on August 14, 1955.

A Certificate of Marriage reflecting that [REDACTED] were married at the Sacred Heart Church in Uvalde, Texas on October 3, 1954.

A Social Security Administration Itemized Earnings Statement reflecting that [REDACTED] earned the following amounts during the requisite period:

1954 - \$270.00
1955 - \$409.15
1956 - \$887.23
1957 - \$1240.09

Based on the evidence submitted, the AAO finds that the applicant has established by a preponderance of the evidence that [REDACTED] was physically present in the United States for approximately six years between his birth in November 1929 and his family's departure to Mexico sometime in 1935. The AAO finds further that the applicant established by a preponderance of the evidence that [REDACTED] was physically present in the United States for approximately 3 ½ years between August 1953 and March 1957. The AAO finds that the evidence fails to establish that [REDACTED] as physically present in the U.S. for ten years prior to March 8, 1957, at least five years of which occurred after [REDACTED] turned fourteen on November 29, 1943.

Based on the above-stated reasons, the AAO finds the applicant has failed to establish that he qualifies for U.S. citizenship under 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 his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.