



U.S. Citizenship
and Immigration
Services

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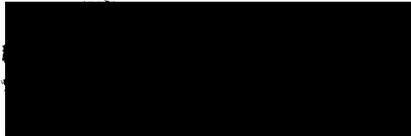


FILE:  Office: EL PASO, TEXAS Date: **JAN 31 2005**

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:



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 in Mexico on July 14, 1956. The applicant's father, [REDACTED] was born in Texas on [REDACTED] and he was a United States citizen. The applicant's mother, [REDACTED] was born in Mexico on September 17, 1926, and she was not a U.S. citizen. The applicant's parents married on May 15, 1948, in Mexico. 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) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director found that the applicant had failed to establish his father [REDACTED] was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] reached the age of fourteen, as required by section 301 of the Act. The application was denied accordingly.

On appeal, counsel asserts that [REDACTED] Social Security Earnings statement, as well as the affidavit and sibling evidence submitted by the applicant, establish that [REDACTED] was physically present in the United States for the requisite time period set forth in 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 on July 14, 1956. Section 301(a)(7) of the former Act is therefore applicable to his 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.

In the present matter, the applicant must establish that his father was physically present in the U.S. for ten years between February 12, 1921 and July 14, 1956, and that five of those years occurred after February 21, 1935, when [REDACTED] turned fourteen.

The evidence relating to [REDACTED] physical presence in the United States during the requisite time period consists of the following:

A Texas Delayed Certificate of Birth reflecting that [REDACTED] was born in Texas on February 12, 1921.

Social Security Earnings statements reflecting that [REDACTED] earned the following amounts in the U.S. between 1946 and 1956:

\$177.50 between October and December 1946,

\$317.71 between January and June 1947,
\$0 in 1948,
\$0 in 1949,
\$0 in 1950,
\$2885.93 between January and December 1951,
\$1117.06 between January and December 1952,
\$0 in 1953,
\$0 in 1954,
\$555.49 between January and December 1955,
\$210.25 between January and March and October and December 1956.

A U.S. birth certificate reflecting that the applicant's brother, [REDACTED] was born in Texas, to the applicant's parents on February 3, 1952.

A U.S. birth certificate reflecting that the applicant's sister, [REDACTED] was born in Texas, to the applicant's parents on February 9, 1950.

An affidavit dated August 31, 2002, written by [REDACTED], stating that he met [REDACTED] in Ruidosa, Texas in 1936, that he worked with [REDACTED] in various places in Texas between 1938 and 1966, and that [REDACTED] and his wife would live in his house.

An affidavit dated August 31, 2002, written by [REDACTED] stating that he met [REDACTED] in Texas between 1948 and 1956, and that he worked with Mr. [REDACTED] in Midland, Texas.

The AAO finds that Mr. [REDACTED] birth certificate establishes by a preponderance of the evidence that Mr. [REDACTED] was physically present in the United States in 1921. The AAO finds further that the Social Security Earnings statement evidence submitted by the applicant establish that Mr. [REDACTED] was physically present in the U.S. for three months in 1946, for six months in 1947, for six months in 1956, and for the entire years of 1951, 1952 and 1955.

The AAO finds, however, that the applicant's siblings' U.S. birth certificates do not contain Mr. [REDACTED] signature or any indication that Mr. [REDACTED] was present at the children's births. Moreover, the AAO finds that the affidavits written by [REDACTED] and [REDACTED] are unsupported by corroborative information or evidence, and that they lack material detail regarding the specific dates of Mr. [REDACTED] physical presence in the U.S. and regarding addresses where Mr. [REDACTED] resided in the United States.

Accordingly, the AAO finds that the applicant has established that his father was physically present in the U.S. for approximately 5 ½ years prior to the applicant's birth in 1956. The applicant has failed, however, to establish that his father was physically present in the U.S. for ten years prior to his birth, at least five of which were after the applicant's father turned fourteen.

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

ORDER: The appeal is dismissed.