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

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FILE: [Redacted] Office: HARLINGEN, TEXAS Date: JUN 21 2005

IN RE: Applicant [Redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 August 18, 1975. The applicant's father, [REDACTED] was born in Texas on March 15, 1931, and he was a U.S. citizen. The applicant's mother, [REDACTED] was born in Mexico, and she is not a U.S. citizen. The record reflects that the applicant's parents married in Mexico on November 15, 1962. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined 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 set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant submits an additional affidavit, and indicates that the evidence presented establishes his eligibility for citizenship under section 301(a)(7) of the former 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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on August 18, 1975. Section 301(a)(7) of the former Act is therefore applicable to his derivative citizenship claim.

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 and its outlying possessions 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 or its outlying possession 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 March 15, 1931 and August 18, 1975, and that five of those years occurred after March 15, 1945, 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 Kerrville, Texas on [REDACTED]

A Social Security Administration Statement of Earnings reflecting that [REDACTED] worked in Texas during the following time periods prior to August 18, 1975:

April – December 1971;

January – December 1972;
January – March and July-September 1973;
April – December 1974;
January – August 1975.

An earnings statement reflecting that [REDACTED] was paid for work in the U.S. on October 30, 1974.

An affidavit signed on April 25, 2004, by [REDACTED] sister [REDACTED] stating that [REDACTED] stayed with her family in Houston, Texas while he worked between the years of 1970 and 1975.

An affidavit signed on April 24, 2003, by [REDACTED] brother, [REDACTED] stating that he and [REDACTED] lived in Houston, Texas since 1971.

A second affidavit signed on April 25, 2004, by [REDACTED] brother, [REDACTED] stating that [REDACTED] stayed with his family in Houston, Texas while he worked between the years 1965 and 1970.

An affidavit signed on April 21, 2003, by [REDACTED] stating that he knew [REDACTED] since childhood, and that [REDACTED] resided continuously in the U.S. from 1970 to 1977.

The AAO finds that the birth certificate, Social Security Administration, and earning statement information contained in the record establish by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for approximately five years prior to the applicant's birth (one year in 1931 and 1972, nine months in 1971, six months in 1973, nine months in 1974, and eight months in 1975). However, the AAO finds that the affidavit evidence contained in the record lacks probative value. None of the affidavits contain corroborative evidence or information to substantiate their claims. Moreover, the affidavits written by [REDACTED] are vague and contain conflicting information regarding the years that [REDACTED] resided in the United States. Furthermore, the affidavits written by [REDACTED] friend and his sister lack basic and material details regarding the exact dates and places that [REDACTED] resided and worked in the United States.

The AAO notes that the record also contains [REDACTED] November 12, 1935, baptismal certificate, his 1942-1943 school record and his November 15, 1962 marriage certificate. Each of the documents was issued in Mexico, and the documents relate to events that occurred when [REDACTED] was physically present in Mexico. The documents are therefore not probative of [REDACTED] physical presence in the United States.

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 AAO finds that the applicant has not met his burden of establishing that his father was physically present in the United States for ten years between March 15, 1931 and August 18, 1975, at least five years of which occurred after his father turned fourteen, as required by section 301(a)(7) of the former Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.