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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:

Office: SAN FRANCISCO, CA

Date: MAY 11 2005

IN RE:

Applicant:

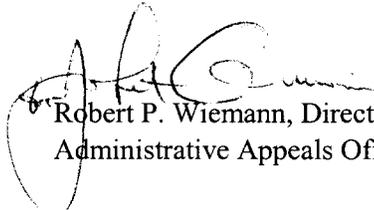
APPLICATION:

Application for Certificate of Citizenship 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, San Francisco, California, 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 September 24, 1953. The applicant claims that his father was known by the name [REDACTED] and that he was born in California on November 26, 1919, and was a U.S. citizen. The applicant's mother [REDACTED] was born in Mexico on February 18, 1925, and she was not a U.S. citizen. [REDACTED] and [REDACTED] were married in Mexico on April 18, 1942. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father 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)).

In a decision dated March 13, 2001, the district director determined the applicant had failed to establish that [REDACTED] and [REDACTED] were the same person, or that his father met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act. The application was denied accordingly. The record reflects that the applicant filed a timely appeal of the district director's decision. However, the appeal was not received by the AAO prior to May 2005. The record reflects that the applicant filed a second Form N-600, Application for Certificate of Citizenship (N-600 application). In a second decision dated June 12, 2003, the acting district director noted the previous March 2001 district director findings regarding the applicant's father's identity and physical presence in the United States. The acting district director then re-determined that the applicant had failed to establish by a preponderance of the evidence that his father was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after his father reached the age of fourteen, as set forth in section 301(a)(7) of the former Act.

Counsel asserts on appeal that the applicant was not given a full opportunity to provide requested evidence to the Immigration and Naturalization Service (Service, now, U.S. Citizenship and Immigration Services, CIS) regarding his father's physical presence in the United States. Counsel asserts further that the evidence submitted by the applicant establishes that his father met the physical presence requirements set forth in the former Act. The AAO notes that counsel requested an additional 180 days to file a brief and to submit additional evidence on appeal. The AAO received no additional brief or evidence.

"[T]he 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 in Mexico in 1953. Section 301(a)(7) of the former Act therefore applies to his 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 . . . 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.

Thus, in order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant must first

establish that his father [REDACTED] was a U.S. citizen. The applicant must then establish that his father was physically present in the U.S. for ten years between November 26, 1919 and September 24, 1953, and that five of those years occurred after November 26, 1933, when [REDACTED] 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. 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 establish that something is probably true.

The record contains the following evidence relating to [REDACTED] identity and U.S. citizenship:

A California Birth Certificate reflecting that an unnamed child was born to [REDACTED] on November 26, 1919, in San Joaquin, Fresno County, California. The birth certificate contains a stamp reflecting that it was amended in 1977.

A second "Affidavit to Amend A Record" page reflects that the child was named [REDACTED] and that the correct names for the child's parents were [REDACTED]

A Baptismal Certificate reflecting that [REDACTED] was born to [REDACTED] and [REDACTED] in California, and that he was baptized in California on December 28, 1919.

A Mexican marriage certificate reflecting that [REDACTED] of San Joaquin, California, and [REDACTED] of Mexico, married on April 18, 1942. The parents of the groom are listed as [REDACTED] and [REDACTED]. The parents of the bride are [REDACTED] and [REDACTED].

A Mexican birth certificate reflecting that the applicant was born to [REDACTED] and [REDACTED] on September 24, 1953, in Michoacan, Mexico. The applicant's paternal grandparents are recorded as [REDACTED] and [REDACTED]. His maternal grandparents are recorded as [REDACTED] and [REDACTED].

A letter written by [REDACTED] the Municipal President of Morelos, Michoacan, Mexico, certifying that [REDACTED] and [REDACTED] are the same person, and that [REDACTED] was born in San Joaquin, California and resided for a period in Progreso, Morelos, Michoacan, Mexico.

A California Death certificate reflecting that [REDACTED] born February 18, 1925, died in Sacramento, California on December 29, 1989, and that her surviving spouse was [REDACTED].

A California Death certificate reflecting that [REDACTED] born November 26, 1919, died in Fresno, California on January 23, 1996.

The AAO finds that the cumulative biographical evidence submitted by the applicant establishes by a preponderance of the evidence that his father used the name [REDACTED] and [REDACTED] and that the two names belong to the same person. The AAO finds further that the applicant's father was born in California on November 26, 1919, and that he was a U.S. citizen.

The record contains the following evidence pertaining to [REDACTED] physical presence in the United States between November 26, 1919 and September 24, 1953:

An amended birth certificate reflecting that [REDACTED] was born in California on November 26, 1919.

A Social Security Administration earnings statement reflecting that [REDACTED] earned an income in the U.S. between October and December of 1951, and between July and December of 1952.

A notarized affidavit, dated October 11, 1997, and signed by [REDACTED] stating in pertinent part that he and [REDACTED] resided near each other in Mexico as children. The affiant states that to the best of his knowledge and belief, [REDACTED] immigrated to the U.S. in 1945, and that he resided in Imperial Valley, California until he moved to Sacramento in 1953. The affiant moved to the U.S. in 1947.

A notarized affidavit, dated December 2, 1997, and signed by [REDACTED] stating in pertinent part that [REDACTED] was her brother-in-law and that he lived in the United States prior to 1958. The affiant states that [REDACTED] children were born in Mexico because he returned to Mexico for family visits every two years.

A notarized affidavit, dated April 3, 1999, and signed by [REDACTED] stating in pertinent part that the affiant was born in Mexico on November 18, 1945, and that he is [REDACTED] son. The affiant states that he and his family immigrated to the U.S. in 1958, and that to the best of his knowledge and belief, and from accounts by his relatives, Mr. [REDACTED] returned to the U.S. on or before 1945. The affiant states that he remembers Mr. [REDACTED] working in the U.S. from the time that the affiant was three years old, and that Mr. [REDACTED] some times stayed in the U.S. for two years at a time.

A notarized affidavit, dated April 5, 1999, and signed by [REDACTED] stating in pertinent part that he is [REDACTED] son and that he has resided in the U.S. since 1958. The affiant states that to the best of his knowledge and belief [REDACTED] returned to the U.S. on or before 1945. The affiant additionally states that his childhood memories are filled with memories of [REDACTED] leaving his family to work in the U.S. for periods of time lasting as long as two years.

A notarized affidavit, dated April 15, 1999, and signed by [REDACTED] stating in pertinent part that she is [REDACTED] daughter, and that she heard through conversations by her parents and other relatives that [REDACTED] lived in the U.S. until 1923, that he returned to the U.S. at the age of twenty-two, and that he traveled between the U.S. and Mexico until his family immigrated to the U.S. in 1958.

A notarized affidavit, dated April 15, 1999, and signed by [REDACTED] stating in pertinent part that she is [REDACTED] daughter-in-law, and that she remembers conversations about [REDACTED] childhood history indicating that he lived in the U.S. until 1923, that he returned to the U.S. at the age of twenty-two, and that he subsequently traveled back and forth between Mexico and the U.S. until 1958.

A notarized affidavit, dated July 3, 1999, and signed by [REDACTED] stating in pertinent part that he was born in the U.S. on May 5, 1918, and that he is [REDACTED] brother. The affiant states that he and his family lived in the U.S. until 1923 when they moved to Mexico. The affiant states that [REDACTED] subsequently returned to the U.S. on September 17, 1945, and began working in Summertown, Arizona. The affiant states

further that [REDACTED] returned to Mexico for five months in April 1947, and that in 1948, U.S. immigration personnel returned [REDACTED] to Mexico on two occasions, subsequent to which it was determined that [REDACTED] was a U.S. citizen.

A Mexican passport issued to [REDACTED] wife, [REDACTED], on July 22, 1958, reflecting in pertinent part that at the time the passport was issued, [REDACTED] was fifteen years old, [REDACTED] was twelve years old, the applicant was four years old and [REDACTED] was two years old.

The AAO finds that the birth certificate, baptismal certificate, and Social Security Administration information contained in the record establish by a preponderance of the evidence that [REDACTED] was physically present in the U.S. in 1919, and between October and December of 1951 and July and December of 1952.

However, the AAO finds that the remaining affidavit evidence contained in the record fails to establish, by a preponderance of the evidence, that [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] turned fourteen on November 26, 1933.

The AAO notes that none of the information contained in the affidavits is corroborated by independent evidence. Moreover, the AAO notes that [REDACTED] children, [REDACTED] and [REDACTED] have no personal knowledge of [REDACTED] physical presence in the U.S. prior to 1958. The AAO notes further that their affidavits contain no information relating to [REDACTED] place of residence in the U.S. or relating to his employment in the United States. Furthermore, the statement by [REDACTED] that [REDACTED] returned to the U.S. on or before 1945, is non-specific and general, and appears to contradict the claim made by Guadalupe and elsewhere, that [REDACTED] returned to the U.S. at the age of twenty-two (between November 1941 and November 1942).

The AAO additionally notes that the affidavits by [REDACTED] stepdaughter, [REDACTED] and his sister-in-law, [REDACTED] do not establish when or where the affiants met [REDACTED]. Nor do the affiants specify their source of knowledge regarding [REDACTED] physical presence in the United States. The AAO notes that the affiants have no personal knowledge of [REDACTED] physical presence in the U.S. prior to the applicant's birth, and the affidavits lack detailed information regarding the dates of [REDACTED] physical presence in the U.S. and regarding his residence or employment in the United States. Moreover, [REDACTED] affidavit provides no information to establish that [REDACTED] was physically present in the U.S. prior to 1958, and [REDACTED] claim that [REDACTED] lived in the U.S. since he was twenty-two (between 1941 and 1942) contradicts other statements by affiants that [REDACTED] moved back to the U.S. in 1945.

The affidavit written by [REDACTED] also fails to demonstrate that he had personal knowledge of [REDACTED] physical presence in the U.S. prior to 1947. Moreover, the affidavit lacks basic and material details regarding the dates that [REDACTED] resided in the United States, the addresses at which he lived, or the names and locations of his employers.

In addition, the affidavit written by [REDACTED] contains vague, non-specific information relating to [REDACTED] physical presence in the U.S. between 1919 and 1923. The affidavit additionally fails to establish that Heliodoro had personal knowledge of [REDACTED] physical presence in the U.S. after 1923, and the affidavit lacks detailed information regarding [REDACTED] residence or employment 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 applicant in the present matter has not met his burden of establishing that his father was physically present in the United States for ten years between November 26, 1919 and September 24, 1953, 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.