



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TX

Date: **OCT 21 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:

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant was born in Mexico on January 1, 1961. The applicant's mother, [REDACTED] was born in Mexico on March 17, 1940. She derived U.S. citizenship status at birth through a parent, and she obtained a U.S. Certificate of Citizenship on February 28, 2002. The applicant's father was born in Mexico and he is not a U.S. citizen. The applicant's parents married in Mexico on January 16, 1956. The applicant presently seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his mother 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 district director determined the applicant had failed to establish by a preponderance of the evidence that his mother 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 mother reached the age of fourteen, as required by section 301(a)(7) of the former Act.

On appeal, the applicant explains that one of the affidavits he submitted is signed by the affiant's wife because the affiant is unable to sign the document himself. The applicant asserts further that his mother lived in the United States, and the applicant asserts that he is trying to obtain more evidence to support his citizenship claim.

"[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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000). (Citations omitted). The applicant was born in Mexico in 1961. 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.

In order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant must establish that his mother was physically present in the U.S. for ten years between March 17, 1940 and January 1, 1961, and that five years occurred after March 17, 1954, when the applicant's mother [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED] physical presence in the United States between March 17, 1940 and May 7, 1971:

An affidavit dated October 9, 2003, containing a cross signature and a signature by [REDACTED]. The affidavit states that [REDACTED] testifies he was born in the U.S. on January 10, 1934, and that he lived his entire life in the United States. The affiant states that [REDACTED] was his aunt and that she lived in the U.S. and often visited his family until she was fifteen.

An affidavit dated October 9, 2003, and signed by [REDACTED] stating that he was born in the U.S. on January 10, 1934, and that he lived his entire life in the United States. The affiant states that [REDACTED] was his aunt and that she lived in the U.S. and often visited his family until she was fifteen.¹

The AAO finds that the 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 she turned fourteen.

The AAO notes that none of the information contained in the affidavits is corroborated by independent evidence. Moreover, the affidavits are vague and lack basic and material details regarding the dates that Ms. [REDACTED] resided in the United States, and the addresses at which she lived. The AAO notes further that even if the affidavits were accepted as probative evidence of [REDACTED] physical presence in the U.S., the affidavits would nevertheless fail to establish that [REDACTED] was physically present in the U.S. for five years after her fourteenth birthday based on the affiants' statements that she lived in the U.S. only until she was fifteen.

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. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the record contains an illegible baptismal certificate from the Immaculate Conception Church in Brownsville, Texas.