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**U.S. Citizenship
and Immigration
Services**

E2



FILE: [Redacted] Office: HARLINGEN, TEXAS Date: **OCT 26 2005**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to § 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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, 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 April 4, 1946. The applicant's mother was not a U.S. citizen. The applicant's father was born in the United States on March 5, 1922 and was a U.S. citizen. The applicant's parents married in 1941 in Mexico. The district director found that the applicant had failed to establish that his father resided in the United States for a total of ten years, five of which occurred after he turned sixteen years old, as required by § 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g).

On appeal, the applicant requests the opportunity to make an oral statement. It is noted that the regulations provide that the requesting party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the applicant has not identified any unique factors or issues of law to be resolved, and the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The applicant submits on appeal an affidavit written by an acquaintance of his father's in which the writer stated that she met the applicant's father in 1936, and that she saw the applicant's father on a daily basis. The AAO finds that the affidavit submitted on appeal and the other affidavits already on the record fail to establish the required length and period of residence for the applicant's father.

"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 August 10, 1946. Section 201(g) of the Nationality Act is therefore applicable to his derivative citizenship claim.

Section 201(g) of the Nationality Act states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In the present matter, the applicant must establish that his father resided in the United States for ten years between March 5, 1922 and April 4, 1946, and that five of those years occurred after March 5, 1938, when the applicant's father turned sixteen. The evidence pertaining to the applicant's father's residence in the United States during the requisite time period consists of a delayed birth certificate, a baptismal certificate, and five affidavits by four different acquaintances of his father's. The affidavits contain insufficient detail regarding the applicant's father's location, activities, and dates of presence, and they are not supported by any independent corroborative evidence. It is not possible to conclude from the evidence submitted that the applicant's father met the U.S. residence requirements for transmitting citizenship to the applicant.

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 AAO finds that the applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for at least ten years, including five years after the age of sixteen, as required by § 201(g) of the Nationality Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.