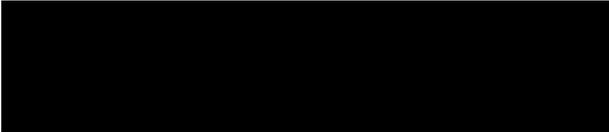


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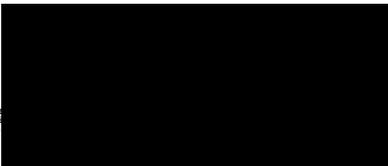
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FILE: [REDACTED] Office: HARLINGEN, TX Date: SEP 26 2005

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(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, 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 June 20, 1976. The applicant's father, [REDACTED] was born in Texas on January 4, 1958, and he is a U.S. citizen. The applicant's mother, [REDACTED] was born in Mexico on September 10, 1958. She is not a U.S. citizen. The applicant's parents married in Texas on August 7, 1978, when the applicant was two years old. 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 derived U.S. citizenship at birth through his father.

The district director found the applicant had failed to establish that 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(a)(7) of the former Act. The application was denied accordingly.

On appeal, counsel asserts that school attendance and medical record evidence submitted by the applicant establish that [REDACTED] lived in the United States most of his life, and that he meets the ten year physical presence requirement set forth in section 301(a)(7) of the former Act. Counsel concedes that [REDACTED] was only eighteen years old when the applicant was born. [REDACTED] therefore did not satisfy the requirement that he be physically present in the U.S. for five years subsequent to his fourteenth birthday and prior to the applicant's birth. Counsel asserts however, that the section 301(a)(7), five-year requirement unconstitutionally discriminates against the applicant's father, and counsel asserts that the requirement should be interpreted liberally by U.S. Citizenship and Immigration Services (CIS).

The AAO notes that counsel provided no legal evidence to support the assertion that statutory language contained in section 301(a)(7) of the former Act should be interpreted differently than as plainly stated in the statute, or to establish that the provision has been found to be unconstitutional.

The AAO finds it has no jurisdiction to rule upon the constitutionality of the Immigration and Nationality Act and the Federal Regulations. *Matter of C-*, 20 I&N Dec. 29 (BIA 1992). The AAO will therefore not address counsel's assertion that section 301(a)(7) violates [REDACTED] rights under the U.S. Constitution.

The AAO finds further that the requirements for citizenship, as set forth in the Immigration and Nationality Act, are statutorily mandated by Congress, and that CIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the former Act. *Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002).

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on June 20, 1976. Section 301(a)(7) of the former Act is therefore applicable 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 the present matter it is undisputed that the applicant's father was not physically present in the United States for a period of at least five years after his fourteenth birthday and prior to the applicant's birth. [REDACTED] has therefore failed to meet the statutory requirements set forth in section 301(a)(7) of the former Act.

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 has failed to meet his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.