

U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
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[Redacted]

FILE: [Redacted] Office: HARLINGEN, TEXAS 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:  
[Redacted]

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 that the applicant was born in Mexico on May 10, 1954. The applicant's mother, [REDACTED] was born in Texas on January 26, 1929.<sup>1</sup> The applicant's father is not a U.S. citizen. The applicant's parents married in Mexico on October 31, 1949. 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 mother.

The district director found the applicant had failed to establish that his mother 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. The application was denied accordingly.

On appeal, counsel asserts that the evidence submitted by the applicant establishes that [REDACTED] satisfied the requisite U.S. physical presence requirements.

"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 in Mexico on May 10, 1954. 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 the applicant must establish that his mother was physically present in the United States for ten years between January 26, 1929 and May 10, 1954, and that five years occurred after January 26, 1943, when [REDACTED] turned fourteen.

The record contains the following evidence relating to [REDACTED]'s physical presence in the United States during the requisite time period:

A Certificate of Birth reflecting that [REDACTED] was born in Rio Hondo, Texas on January 26, 1929.

A notarized affidavit dated May 7, 1993 and signed by [REDACTED] stating that

<sup>1</sup> The Record of Proceedings does not contain a copy of the applicant's birth certificate. The AAO therefore has no evidence of the applicant's birth to [REDACTED]. The AAO notes, however, that the district director's decision accepts that [REDACTED] is the applicant's biological mother. The decision also accepts the applicant's birth date as set forth in his Application for Certificate of Citizenship. The AAO will therefore assume, for purposes of the present decision, that the applicant's birth date is correct and that [REDACTED] is the applicant's biological mother.

she and her husband brought [REDACTED] with them from Mexico around 1941, and that [REDACTED] worked and lived in their house in Brownsville, Texas until October 1949, when she married and returned to Mexico.

A notarized affidavit dated March 18, 1993 and signed by [REDACTED] stating that she was born in Texas on January 26, 1929, and that she resided in Texas until her family returned to Mexico in August 1933. [REDACTED] states that she returned to the U.S. with [REDACTED] and [REDACTED] around 1941, when she was twelve years old, and that she worked for, and lived with the [REDACTED] family in Brownsville, Texas until marrying and returning to Mexico in October 1949.

A notarized affidavit dated March 18, 1993 and signed by [REDACTED] stating that he is the applicant's father and that he met [REDACTED] in Brownsville, Texas in February 1949. He states that [REDACTED] lived with, and worked for, the [REDACTED] family in Brownsville, Texas until she married him and returned to Mexico in October 1949.

A Mexican marriage certificate reflecting that [REDACTED] married [REDACTED] in Rio Bravo, Tamaulipas, Mexico on October 31, 1949.

The AAO finds that the birth certificate submitted by the applicant establishes that [REDACTED] was physically present in the United States on January 29, 1929. The AAO finds, however, that the affidavits submitted by the applicant lack probative value. The affidavits contain no corroborating evidence or information to substantiate their employment and residence claims and they lack basic and material details regarding [REDACTED] physical presence in the United States. The applicant has therefore failed to establish by a preponderance of the evidence that [REDACTED] was physically present in the United States at any time after January 29, 1929.

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.