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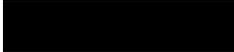
U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN DIEGO, CA

Date: **SEP 26 2005**

IN RE:

Applicant:



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:

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. Williams
Robert P. Williams, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Diego, California. 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 September 25, 1947. The applicant's mother, [REDACTED] was born in Texas on May 16, 1909, and she was a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico. He was not a U.S. citizen. The applicant's parents married in Mexico on November 21, 1929. 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 that the applicant had failed to establish his mother [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, the applicant asserts that the evidence submitted establishes his mother was physically present in the United States for twenty-three years prior to the applicant's birth. The applicant concludes that he is therefore entitled to U.S. citizenship.

"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 September 25, 1947. 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 U.S. for ten years between May 16, 1909 and September 25, 1947, and that five of those years occurred after May 16, 1923, when [REDACTED] turned fourteen.

The evidence relating to [REDACTED] physical presence in the U.S. during the requisite time period consists of the following:

A sworn Affidavit of Birth signed in Fontana, California on June 12, 1950, by [REDACTED] mother attesting to [REDACTED] birth in San Angelo, Texas on May 16, 1909. The Affidavit of Birth was recorded at the Tom Green County, Texas Court on July 31, 1950.

A Certificate of Baptism dated May 8, 1950, reflecting that [REDACTED] was born on May 16, 1909, and that she was baptized at the Church of Sacred Heart in San Angelo,

Texas on October 24, 1909.

A Texas Delayed Certificate of Birth, issued on October 12, 1972, reflecting that [REDACTED] sister, [REDACTED] was born in San Angelo, Texas on July 23, 1913.

A California Certificate of Birth reflecting that [REDACTED] was born in Seeley, California on May 9, 1919.

An August 16, 1988, affidavit signed by [REDACTED] stating in pertinent part that she is [REDACTED] sister and that [REDACTED] and family were in Calexico, California in 1923, but went to reside in Mexicali, B.C. in 1932.”

A marriage certificate reflecting that [REDACTED] married her husband [REDACTED] in Mexico on November 21, 1929.

An October 5, 1932, Certificate of Residence from the Mexican Consulate in Calexico, California stating that the applicant's father [REDACTED] proved he was a Mexican citizen and that he had resided in the U.S. for more than six months. The document reflects that [REDACTED] immigrated to the U.S. through Calexico, California in May of 1923. The Certificate reflects further that [REDACTED] traveled to Mexicali, Mexico with [REDACTED] and their child, Adelaida, on October 5, 1932. The Certificate also reflects that [REDACTED] traveled with the following property: his car, a tire, a complete bed, tents and bundles of kitchen utensils.

A death certificate reflecting that [REDACTED] died in Mexicali, Mexico on January 26, 1973, and that at the time of her death she resided in Mexicali, Mexico.

A Form N-600, Application for Certificate of Citizenship (N-600 Application) filed by the applicant on June 24, 1971, stating in question #9, that his mother [REDACTED] resided in the United States from 1909 to 1920. The applicant's 1971 N-600 application claimed no other years of U.S. physical presence for his mother.

An N-600 application filed by the applicant on September 21, 2000, stating in question #9, that his mother, [REDACTED] resided in the U.S. from 1909 to 1920 and from 1923 to 1932.

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. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The AAO finds that the cumulative evidence presented in the applicant's case establishes that Ms. Gonzalez was probably physically present in the U.S. between 1909 and 1920, when she was approximately eleven years old. The AAO finds, however, that the applicant has failed to establish by a preponderance of the evidence that his mother was physically present in the U.S. for five years after her fourteenth birthday in 1923.

The applicant failed to address or overcome the contradictory information provided by him in his 1971 and subsequent 2000, N-600 applications, regarding the time period's of his mother's U.S. residence. Moreover, the AAO finds that the affidavit signed by [REDACTED] lacks probative value. The record contains no birth certificate or other independent evidence to establish [REDACTED] birth or relationship to Ms.

[REDACTED] In addition, the affidavit lacks corroborative evidence and material detail relating to the dates and places of [REDACTED] residence in the United States. The AAO finds further that the Mexican Consulate Certificate of Residence information submitted by the applicant lacks corroborative or detailed information relating to [REDACTED] residence in the United States, as it makes no reference to [REDACTED] accompanying her parents and sister. The document therefore also lacks probative value as to [REDACTED] physical presence in the United States.

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 applicant has failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.