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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TEXAS

Date: APR 26 2006

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to § 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for a certificate of citizenship 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 on February 1, 1953 in Mexico. The applicant applied for a certificate of citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father. The applicant's father was born in Texas on November 15, 1929, and the applicant claims that he lived his entire life in the United States. The applicant's mother, to whom her father was married, is not a U.S. citizen.

The district director found that the applicant had failed to establish that his father resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after his father turned fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, the applicant states that he has no additional evidence to establish his father's period of residence in the United States. He also states that his father worked at a ranch in Texas from 1940 to 1948; however, there is no census record for his 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 in this case was born in 1953; hence, § 301(a)(7) of the former Act applies to her claim to derivative citizenship.

Section 301(a)(7) of the former Act states 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 and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The applicant must therefore establish that his father was physically present in the United States for ten years between his birthdate on November 15, 1929 and the applicant's birthdate on February 1, 1953, and that five of these years occurred after his father turned fourteen on November 15, 1943. The record contains the applicant's father's birth and baptismal certificates, a letter from the applicant's mother, and affidavits executed by the applicant's aunt, a friend, and an employer of her father's. Additionally, The AAO finds in CIS records a "Supplemental Report" dated August 14, 1978, signed by Albert Wiley Blakeway, General Attorney Nationality. The latter document appears to be a consular report provided for the applicant and his brother, both of whom had apparently applied for certificates of citizenship.

The record establishes that the applicant's father was born in Texas in 1929 and was baptized there in 1930. There is no primary evidence regarding his continued physical presence in Texas, and the only other evidence

on the record consists of the above-mentioned letter and affidavits. According to her letter, the applicant's mother met her father in Texas in 1948. She wrote that she lived in Mexico while the applicant's father lived and worked in the United States, apart from the family. The applicant's mother wrote that her husband's boss brought her his pay, but she only saw her husband a few times a year. The applicant's mother's letter does not include details about the applicant's father's dates of presence in the United States, his place of residence, and his activities. In fact, other than at the very beginning of their relationship, it appears that the applicant's mother was not a witness to the applicant's father's presence in the United States. The three affidavits state knowledge of the applicant's father's presence and employment in the United States, but they do not provide sufficient material detail and do not constitute evidence establishing the physical presence requirement.

The AAO notes a discrepancy between the applicant's father's sister's and employer's affidavits and the Supplemental Report (in CIS records), which reflects the applicant's father's testimony regarding his physical presence in the United States. The applicant's father's employer wrote that the applicant's father worked at the affiant's father's dairy farm in Texas from 1950 to 1960. The applicant's aunt wrote that the applicant's father worked in Texas from 1950 to 1967, visiting his family in Mexico once or twice a year. The Supplemental Report, however, states that the applicant's father testified that he lived in Texas from his birth in 1929 until 1931, when he returned to live in Mexico. The report further states that the applicant's father did not return to the United States until 1959. This information differs from that provided by the affiants. This discrepancy results in doubt regarding the accuracy of the affidavits provided in evidence. Doubt cast on any aspect of the applicant's documentation may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO finds that the evidence fails to establish that the applicant's father was present in the United States for a total of at least ten years, five of which were after his fourteenth birthday. 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 failed to meet that burden. The applicant therefore does not qualify for a certificate of citizenship pursuant to § 301(a)(7) of the former Act, and the appeal will be dismissed. This decision is without prejudice to the applicant's filing of a new Form N600 if sufficient documentation regarding his father's physical presence in the United States becomes available.

ORDER: The appeal is dismissed.