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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: EL PASO, TX DATE: AUG 07 2006

IN RE: APPLICANT [REDACTED]

APPLICATION: Application for Certificate of Citizenship 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, 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 November 10, 1972. The applicant's father [REDACTED] was born in Mexico on September 4, 1945. He acquired U.S. citizenship at birth through his U.S. citizen mother. The applicant's mother was born in Mexico and she is not a U.S. citizen. The applicant's parents married in Texas on March 23, 1966. The applicant presently seeks a Certificate of Citizenship based on the claim that he acquired U.S. citizenship at birth through his father 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)).

The district director determined the applicant had failed to establish by a preponderance of the evidence that his father was physically present in the U.S. for a total of ten years prior to the applicant's birth, at least five years of which occurred after his father 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 affidavits contained in the record clarify contradictory U.S. physical presence claims made in [REDACTED] 1963, Application for Registration. Counsel asserts that [REDACTED] was present in the U.S. prior to 1963, but that he did list U.S. physical presence dates prior to March 1963 in his Application for Registration because he believed he had been in the U.S. illegally, and therefore did not think the presence should be mentioned. Counsel indicates further that [REDACTED] may have been confused by consular questioning in the English language. Counsel asserts that the totality of evidence contained in the record establishes by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth, and **counsel concludes that the applicant therefore qualifies for citizenship under section 301(a)(7) of the former Act.**

"[T]he 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 in Mexico in 1972. Section 301(a)(7) of the former Act therefore applies 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. (Emphasis added.)

In the present matter, the applicant must establish that his father was physically present in the U.S. for ten or more years between September 4, 1945 and November 10, 1972, and that at least five of those years occurred after September 4, 1959, when [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED] physical presence in the United States during the relevant time period:

A U.S. Department of State, Application for Registration, signed by [REDACTED] on March 1, 1963, indicating in a section entitled, "I Have Been Absent From The U.S. During The Past 5 Years At The Following Places For The Periods Stated (List Absences Of More Than 2 Month's Duration)", that he lived in Leon Gto., Mexico from the time of his birth until 1953, and in [REDACTED] Mexico from 1953 to date. [REDACTED] listed his address as [REDACTED] 1227, in [REDACTED], Mexico in his application. The application reflects that the contents of the application were read to [REDACTED]. [REDACTED] signed a statement that he understood the contents of the application and the statements made therein, and [REDACTED] signed a statement in which he solemnly swore that the statements made in his Application for Registration were true. Approval of the application was recommended on July 10, 1963, and the application was date stamped by the Passport Office on July 23, 1963.

A U.S. Consular Registration of Birth, dated July 24, 1969, reflecting that [REDACTED] was issued a U.S. passport at the American Consulate in Juarez, Mexico on August 30, 1963.

A Certificate of Citizenship reflecting that [REDACTED] was issued a Certificate of Citizenship on October 7, 1969, and that he resided in Texas when his Certificate of Citizenship was issued.

A marriage certificate reflecting that [REDACTED] was married in El Paso, Texas on March 23, 1966.

Texas birth certificates indicating that [REDACTED] lived in El Paso, Texas when the applicant's siblings were born on April 16, 1966, April 2, 1967, and June 24, 1968.

U.S. Social Security Administration records for the period between January 1960 and December 1972, reflecting that [REDACTED] was employed in the United States at various times between July-September, 1963 and October-December 1972.

An affidavit signed by [REDACTED] on October 14, 2004, stating in pertinent part that he began living and working in the United States late April 1962. [REDACTED] states that he did not know of his U.S. citizenship in 1962, and he states that he worked as a farm laborer, that he had no Social Security number or other documents, and that he was paid in cash. [REDACTED] states that he lived with his sister [REDACTED] in El Paso, Texas before and after his March and August 1963, consular interviews in Mexico, regarding his U.S. immigrant and citizenship status.

An affidavit signed by [REDACTED] sister, [REDACTED] on October 14, 2004, stating in pertinent part that [REDACTED] lived with their mother in Mexico until he was sixteen, and that he then moved in with her in El Paso, Texas and began working. The affiant indicates that [REDACTED] returned to Mexico in March and August of 1963, for consular interview purposes, but that he lived in Texas continuously after April 1962.

An affidavit signed by [REDACTED] mother on October 14, 2004, stating in pertinent part that [REDACTED] resided with her in Mexico until April of 1962, when he went to work and live with his sister in El Paso, Texas. [REDACTED] mother indicates that [REDACTED] returned to Mexico on two occasions in 1963 for consular interview purposes, but that he lived in Texas continuously after April 1962.

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. 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 for section 301(a)(7) of the former Act purposes, the evidence contained in the record establishes by a preponderance of the evidence that [REDACTED] was physically present in the United States between July 1963 and November 10, 1972 – nine years and 3 months prior to the applicant's birth. The AAO finds, however, that the evidence submitted by the applicant fails to establish by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

In the present matter, the statements made in the affidavits contained in the record materially contradict sworn testimony information provided by [REDACTED] in his 1963, Application for Registration, in which he states that he was not present in the United States prior to filing his application on March 1, 1963. The AAO notes that [REDACTED] affidavit does not address the inconsistent U.S. physical presence information contained in his 1963, Application for Registration. The AAO notes further that none of the U.S. physical presence claims made in the affidavits are corroborated by independent evidence. Moreover, the affidavits are written by [REDACTED] [REDACTED]'s sister and [REDACTED] mother, all arguably interested witnesses to the applicant's U.S. citizenship claim. Under these circumstances, the AAO finds that the affidavits lack probative value regarding [REDACTED] physical presence in the United States. The AAO therefore finds that the applicant has failed to establish, by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for a total of ten years prior to the applicant's birth, at least five years of which occurred after he turned fourteen.

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 not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.