



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HOUSTON, TX

Date:

DEC 14 2006

IN RE:

APPLICATION:

Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7), as amended.

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, 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 October 1, 1962 in Mexico. The applicant's mother, [REDACTED] was born on July 15, 1935 in Robstown, Texas. The applicant's father, [REDACTED] now deceased, was at the time of his birth, a citizen of Mexico. Although the death certificate for the applicant's father identifies him as Mexican American, it does not indicate the date on which he may have acquired U.S. citizenship. The applicant's parents married on January 3, 1955. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his mother.

"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 Mexico on October 1, 1962. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the Immigration and Nationality Act (the Act), as amended, the applicable immigration statute in effect in 1962.

Section 301(a)(7) of the 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.

The district director found the evidence of record insufficient to establish that, prior to the applicant's birth, his U.S. citizen mother had been physically present in the United States for periods totaling at least ten years. She noted that the affidavits sworn by [REDACTED] but did not find them to be proof of [REDACTED] time in the United States. Accordingly, she denied the Form N-600, Application for Certificate of Citizenship.

On appeal, counsel contends that the applicant's mother has "continuously resided in the United States since her birth with the exception of a few years when she resided in Mexico." Counsel states that Ms. [REDACTED] unable to provide supporting evidence of her time in the United States because she never attended a U.S. public school and, prior to the applicant's birth, worked for a period of only two years using her social security number. In support of the appeal, counsel submits an affidavit from [REDACTED] an earnings report issued to her by the Social Security Administration for the years 1953-1985, and two additional affidavits from [REDACTED] and [REDACTED] cousins.

The only documentary evidence that establishes Ms. [REDACTED] as being in the United States is her birth certificate and the Social Security earnings report submitted on appeal, which indicates that in 1953 and 1954, she earned \$234.51 and \$347.10 respectively. In place of documentary evidence, the applicant submits five affidavits, sworn by his mother and four other family relations.

Ms. [REDACTED] cousin, states that he has known her since her birth and that her parents lived in Robstown, Texas from 1929 through 1940, when [REDACTED] would have been five years of age. He also says that he worked as a truck driver in various crop farms and that he transported field workers

from Robstown, Texas, among them [REDACTED] family, to Cameron, Texas. He states that the primary time frame of crop farming was May 1949 through November 1954. [REDACTED] the aunt of Ms. [REDACTED] states that Ms. [REDACTED] family lived with her in Cameron, Texas for varying periods of time between 1930 and 1954. With the exception [REDACTED] statement that the applicant's mother and her family lived in Robstown, Texas from 1929 to 1940, neither affiant offers more than a general timeframe over which they were aware of Ms. [REDACTED] presence in the United States. [REDACTED] affidavit does not state that he knows [REDACTED] to have been in the United States from May 1949 through November 1954, only that this period was the primary time for crop farming. [REDACTED] statement does not define what she means by "varying periods of time" during the 1930-1954 period in which she states that [REDACTED] family lived with her.

On appeal, [REDACTED] states that her family and [REDACTED] family worked together as crop pickers in and around Robstown, Texas from 1943-1946 and that from 1946-1952, both families lived together in Cameron, Texas. She further asserts that, between 1956 and 1959, [REDACTED] and her husband visited Cameron, Texas in six-month increments to perform seasonal agricultural work. [REDACTED] statement attests that she remembers Ms. [REDACTED] during the period 1943-1945 when they counted fighter jets flying above and around the [REDACTED] that, between 1946-1952, Ms. [REDACTED] family consistently lived with hers in Cameron, Texas while they followed the agricultural crops and, finally, that [REDACTED] used to [REDACTED] exas with her husband to work the farm lands in 1956-1958. The sworn statement from Ms. [REDACTED] regarding the periods she spent in the United States reflects this same timeline, but adds that she and her husband continued to travel between Mexico and Texas for three to six months at a time until 1960.

The timeline provided by the affidavits submitted on appeal is not consistent with that offered in the statements provided by Ms. [REDACTED] cousin, [REDACTED] or her aunt, [REDACTED]. As discussed above, [REDACTED] affidavit states that Ms. [REDACTED] family lived in Robstown, Texas until 1940, while the affidavits submitted on appeal indicate that [REDACTED] family lived in Robstown from 1943-1946. In her affidavit, [REDACTED] states that her niece's family lived with her for varying periods of time in Cameron, Texas from 1930 through 1954. In their statements, her daughters attest that the families lived together in Cameron, Texas only between 1946 and 1952. These inconsistencies are not addressed in the record and undermine the applicant's efforts to establish the physical presence of his mother in the United States prior to his birth.

Moreover, the record offers no documentary evidence, beyond Ms. [REDACTED] social security earnings report for 1953 and 1954, to support the affidavits submitted to establish her presence in the United States. Counsel states that Ms. [REDACTED] is unable to provide any documentary evidence of her life in the United States because she did not attend public school and, with the exception of the two years just noted, did not work with a social security card. However, the range of documentation that may be used to establish physical presence is considerably broader than school and employment records. The regulation at 8 C.F.R. § 322.3(b)(1)(vii) lists examples of the type of documentation required to establish the physical presence of U.S. citizen parents or grandparents in the United States, including school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations. In that documentation other than school and employment records might have been provided in support of the submitted affidavits, counsel's assertions that Ms. [REDACTED] unable to document her presence in the United States are not persuasive.

For the reasons discussed above, the AAO finds the record to contain insufficient evidence to establish that, prior to the applicant's birth, Ms. [REDACTED] was physically present in the United States for at least ten years, five of which followed her 14th birthday. The record offers no documentary evidence that would satisfy the requirements of section 301(a)(7) of the Act. The affidavits submitted in lieu of documentation provide contradictory accounts of Ms. [REDACTED] time in the United States. Accordingly, the appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in this proceeding.

ORDER: The appeal is dismissed.