

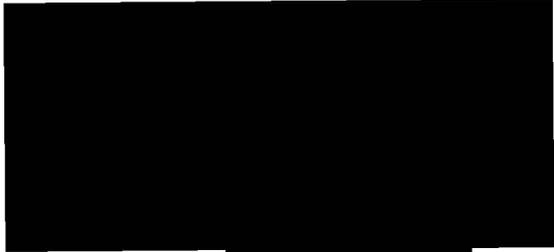
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U.S. Citizenship  
and Immigration  
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FILE:

Office: HARLINGEN, TEXAS

Date: JUN 09 2006

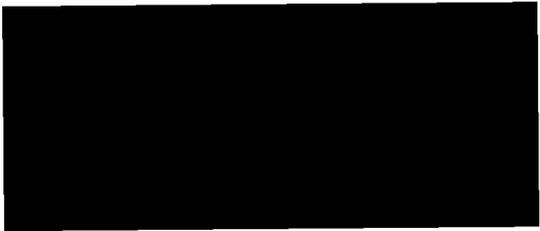
IN RE:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 3, 1977 in Mexico. The applicant's father was born in the United States and was a U.S. citizen at the time of the applicant's birth. The applicant's mother is a lawful permanent resident (LPR) of the United States, having been the beneficiary of a petition for alien relative filed by the applicant's U.S. citizen father. The record establishes that the applicant's parents were married to each other at the time the applicant was born. The applicant has 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 district director found that, based on the evidence in the record, 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, counsel asserts that the district director did not correctly analyze the evidence on the record. Counsel asserts that the documentation on the record establishes the required period of the applicant's father's U.S. physical presence. The AAO has reviewed the entire record and finds that the totality of the evidence shows that the applicant's father resided in the United States for ten years, five of which were after he turned fourteen, prior to the applicant's birth. The applicant has established eligibility for a certificate of 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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in 1977; hence, § 301(a)(7) of the former Act applies to his 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 a U.S. citizen at the time of the applicant's birth and that his father was physically present in the United States for ten years between his father's birth on January 22, 1952 and the applicant's birth on October 3, 1977, and that five of those years occurred after the applicant's father turned fourteen on January 22, 1966. The record contains the following evidence relating to the applicant's father's U.S. citizenship and residence during the requisite time period:

Both long and short form Birth Certificates showing his father's birth in Brownsville, Texas;

Father's Social Security earnings statement for 1966 and 1968 through 1977;

Marriage certificate showing his father's marriage in Texas in 1974;

Affidavit by applicant's father's brother stating personal knowledge of father's presence in United States beginning in 1965;

Affidavit by applicant's mother stating personal knowledge of father's presence in United States beginning in 1971;

Affidavit by applicant's mother's sister stating personal knowledge of her father's presence in United States beginning 1974; and

Affidavit by applicant's father's former landlady stating that she rented property in Houston, Texas to applicant's father from 1966 to 1977.

The AAO finds the above-listed documents to be consistent among each other, and the affidavits to be detailed and based on personal knowledge. The evidence shows that the applicant's father was born in the United States and that he was present in this country for at least ten years prior to the applicant's birth in 1977. The applicant has established by a preponderance of the evidence that he meets the requirements for a certificate of citizenship as set forth under § 301(a)(7) of the former Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.