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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, TX

Date: **NOV 21 2006**

IN RE:

Applicant:



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).

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.

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, 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 October 25, 1953 in Mexico. The applicant's father, [REDACTED] was born on May 25, 1931 in Alice, Texas. The applicant's mother, [REDACTED] was at the time of her birth, a citizen of Mexico and, based on the applicant's Form N-600, Application for Certificate of Citizenship, is now a U.S. citizen. The applicant's parents were married on November 27, 1952. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her 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 Mexico on October 25, 1953. Therefore, she must establish her claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1953.

Section 301(a)(7) of the 1952 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 applicant must therefore establish that her father, [REDACTED] was a U.S. citizen at the time of her birth and that he met the physical presence requirements set forth above prior to her birth.

As noted above, the record includes a delayed certificate of birth for [REDACTED] that demonstrates he was born in Alice, Texas on May 25, 1931. Accordingly, the applicant has established that her father was a U.S. citizen at the time of her birth.

To establish [REDACTED] presence in the United States for the requisite period, the applicant initially submitted copies of the delayed certificate of birth just noted; his baptismal certificate; a Selective Service registration certificate, dated October 5, 1966; a Selective Service classification notice, dated December 12, 1969; his Social Security card; a release of lien notice issued to him on March 8, 2000; a telephone bill in his name dated July 9, 2005; and an affidavit from an individual claiming to have known [REDACTED] for more than 50 years and to have worked with him in the United States between 1949 and 1952. The district director found this evidence insufficient to establish that prior to the applicant's birth, [REDACTED] had been physically present in the United States for a total of ten years, five of which followed his 14th birthday. He denied the application accordingly.

On appeal, the applicant submits additional evidence, nearly all of which documents [REDACTED] presence in the United States in the years following her birth. As section 301(a)(7) of the Act requires that the applicant establish her father's presence in the United States prior to her birth, the only new document that responds to the 1952 Act's requirements is a record of school attendance showing Mr. Martinez as being enrolled in elementary school between October 6, 1938 and May 24, 1939.

The evidence of record, therefore, contains only two documents related to the physical presence of the applicant's father in the United States prior to her birth on October 25, 1953 – the school record just noted and the affidavit from an individual who claims to have known [REDACTED] for more than 50 years. For the reasons discussed below, they are insufficient proof that the applicant's father was physically present in the United States for ten years prior to her birth.

The record of attendance identifies [REDACTED] by name, as well as the names of his parents. While it does not indicate the name of the school or its location, the record of attendance does establish that [REDACTED] lived during this period in Alice County, Texas. Accordingly, it is proof that he was physically present in the United States for the nearly eight months he attended elementary school.

While the AAO notes the affidavit sworn by the individual who claims that he and a friend worked with the applicant's father in the United States between 1949 and 1953, there is no evidence in the record to support this statement. In the absence of any documentary evidence to support its claims, a single statement is not sufficient to prove that [REDACTED] lived in the United States during 1949-1953. Moreover, even if the affidavit were to be accepted as proof of [REDACTED] residence, it would establish only that [REDACTED] was present in the United States for a period of four years. When combined with the eight months of residence established by the 1938-1939 school record, the length of [REDACTED] presence in the United States would total less than five years.

For the reasons previously discussed, the AAO does not find the record to establish that, prior to the applicant's birth, her father was physically present in the United States for a total of ten years, five of which followed his 14th birthday.

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 her burden in this proceeding and the appeal will be dismissed.

ORDER: The appeal is dismissed.