

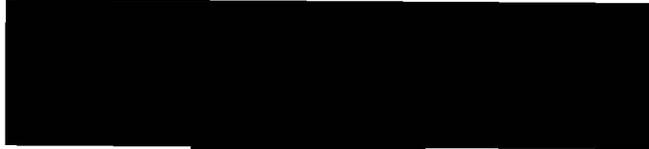


U.S. Citizenship  
and Immigration  
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FILE:

Office: HARLINGEN, TX

Date: OCT 10 2006

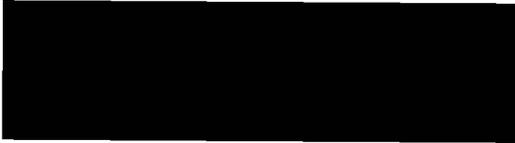
IN RE:

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:



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, 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 June 23, 1970 in Mexico. The applicant's father, [REDACTED] now deceased, was born on January 1, 1925 in San Antonio, Texas. The applicant's mother, [REDACTED] was at the time of his birth, a citizen of Mexico and, based on the applicant's Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents were married on March 6, 1953. The applicant seeks to establish U.S. citizenship pursuant to section 301(a)(7) of the Immigration and Nationality Act of 1952 (1952 Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through 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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in Mexico on June 23, 1970. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the 1952 Act, the applicable immigration statute in effect in 1970.

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 district director denied the Form N-600 on February 16, 2006 because the record did not establish that the applicant's U.S. citizen father had been physically present in the United States for periods totaling ten years, at least five of which occurred after he reached 14 years of age. On February 27, 2006, the applicant wrote to the district director, submitting an affidavit related to his father's U.S. residence and copies of several photographs he indicated were taken of his father in the United States. Although the applicant, on appeal, states that he plans to submit a brief and/or evidence within 30 days, the record contains no evidence beyond that submitted by the applicant on February 27, 2006.

The record offers the following evidence regarding the U.S. citizenship and residence of the applicant's father:

- A baptismal certificate issued by the Immaculate Heart of Mary Church in San Antonio, Texas indicating the applicant's father was baptized on March 8, 1925.
- A Texas birth certificate establishing the father's birth on January 1, 1925 in San Antonio, Texas; and a birth registration card issued by the Texas Department of Health on October 15, 1964.

- Two statements signed by the applicant's uncle, [REDACTED] attesting to his brother's birth in the United States. [REDACTED] also states that he and the applicant's father moved to Mexico when [REDACTED] was 12 years old, but returned to the United States six years later. He states that he and the applicant's father lived thereafter in San Antonio at [REDACTED] and that the applicant's father used to travel between San Antonio and Mexico supervising [REDACTED] contracts. In the affidavit signed on May 6, 2005, [REDACTED] states that the applicant's father commuted "twice every 6 month[s] supervising my contracts" until 1965. In the affidavit he signed on September 26, 2005, [REDACTED] indicates that the applicant's father traveled between Mexico and San Antonio twice a month until 1972.
- A deed of trust note signed by [REDACTED] and [REDACTED] for the property at [REDACTED] in San Antonio, Texas, the location at which [REDACTED] claims the applicant's father lived with him in the United States.
- Records from the 1930 U.S. census which show the applicant's father as living in the United States five years after his birth; and birth certificates for [REDACTED] and [REDACTED] [REDACTED] brothers of the applicant's father, showing that both were born in the United States in 1928 and 1930 respectively.
- An affidavit from [REDACTED] who states that he worked at a painting and hardware store between 1948 and 1964, where he met the applicant's father who worked with his brother, [REDACTED] in the painting industry. [REDACTED] indicates that the applicant's father used to come into the store where he worked to buy and compare supplies, and that applicant's father stated that he "came from Mexico several weeks at a time to supervise most of the jobs his brother was doing."
- Four photographs of the applicant's father, which were taken in San Antonio, Texas in 1955, 1959, 1964 and 1965.

While the AAO notes the documentation submitted by the applicant, it does not find it sufficient to establish that prior to his 1970 birth his father had resided in the United States for the ten-year period required by section 301(a)(7) of the 1952 Act.

Although the birth certificate of the applicant's father demonstrates he was born in the United States and a U.S. Census places him in Ohio in 1930, the applicant has submitted no other primary evidence, e.g., school, employment, tax or housing records, that would indicate that his father lived in the United States for at least ten years prior to his birth, five of which followed his father's 14<sup>th</sup> birthday. The photographs, deed of trust note, and affidavits from the applicant's uncle, [REDACTED] and [REDACTED] are of little evidentiary value in establishing his U.S. residence. The photographs of the applicant's father, while taken in San Antonio during the years the applicant has claimed, are not proof of residence. They establish only that the applicant's father was in San Antonio, Texas at the time the photographs were made. The deed of trust note indicates only that property in San Antonio at [REDACTED] was purchased by [REDACTED]. It offers

no proof that the applicant's father resided there. Moreover, as the note is dated April 16, 1962, it does not support [REDACTED] statements that he and the applicant's father lived at this address, beginning on or around his 18<sup>th</sup> birthday in 1948.

The AAO will not accept the statements from [REDACTED] as proof of his brother's U.S. residence. The inconsistencies in these statements relating to the frequency of the trips made by the applicant's father to the United States and the time period over which he commuted between Mexico and San Antonio undermine their reliability. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Further, neither of [REDACTED] statements indicates the length of time that the applicant's father spent in the United States during the years he commuted between Mexico and San Antonio. The affidavit sworn by [REDACTED] offers no first-hand knowledge of the U.S. residence of the applicant's father. [REDACTED] statements regarding the purchases made by the applicant's father at the store where he worked do not establish U.S. residence.

Based on the record before it, the AAO finds the applicant has not established that prior to his birth, his father had resided in the United States for a total period of ten years, five of which followed his 14<sup>th</sup> birthday. Accordingly, the appeal will be dismissed.

The burden of proof in this proceeding rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The appeal is dismissed.