



U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN ANTONIO, TX

Date:

AUG 08 2007

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 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, San Antonio, 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 July 31, 1977 in Mexico. The applicant's father is a citizen of Mexico. The applicant's mother, [REDACTED] is a native U.S. Citizen, born on September 30, 1953 in Elgin, Illinois. The applicant's parents were married on June 21, 1975 in Mexico.

The district director concluded that the applicant had failed to establish that his mother had the requisite period of physical presence in the United States to be eligible to derive citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g). The application was denied on July 6, 2004.

On August 6, 2004, the applicant filed an appeal of the district director's decision. On appeal, the applicant contends that the district director erred in not according weight to the affidavits he submitted in support of his claim. *See* Form I-290B, Notice of Appeal. He claims that his mother was physically present for the required period, as evidenced by the affidavits and school records he provided. *Id.* The applicant included letters from four individuals with his appeal, including a letter from his aunt, [REDACTED]. The applicant indicated that he would be submitting a brief in support of his appeal within 30 days. *Id.* The applicant submitted a brief and additional documentation on March 14, 2006.

The AAO notes that "[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 on July 31, 1977. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.

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.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his mother was physically present in the United States for at least 10 years prior to July 31, 1977, five of which after September 30, 1967 (when her mother turned 14 years old). In support of his citizenship claim, the applicant submitted his mother's school records and several affidavits executed by family members and friends.

The relevant evidence in the record indicates that the applicant's mother resided in the United States from 1953 until 1956, during the summers from 1956 to 1965, and from 1965 to 1969. The applicant's mother's

school records suggest that she was only present in the United States for a few months during the 1967-68 school year. The applicant claims that his mother was also physically present in the United States from 1971 to 1974, and one month in 1975. There is no documentary evidence to support the applicant's claim that his mother was present in the United States in the early to mid 1970s.

Based upon a careful review of the record, the AAO finds that the applicant has failed to establish that his mother was physically present in the United States for the required 10 years, five of which were after 1967. The AAO finds that the applicant has only met his burden to prove that his mother was physically present in the United States for approximately 9 years prior to 1969. The AAO finds that the applicant has failed to establish that it is "more likely than not" that his mother was present in the United States in the early to mid 1970s, as he claims. Thus, the applicant has not established that his mother was present in the United States for five years after turning 14 years old, in 1967.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

The AAO further 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.)

The AAO finds the affidavits submitted by the applicant do not establish that his mother was physically present in the United States for the requisite period, particularly for the period after September 1967. The AAO cannot give more weight to the affidavits submitted in the face of school records indicating that the applicant's mother was only present in the United States for one quarter during the 1967-68 school year and taking into account the lack of documentary evidence relating to his mother's claimed presence in the United States in the early to mid 1970s. The AAO thus finds that the applicant has not met her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.