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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: [REDACTED] Office: SAN DIEGO, CA Date: AUG 17 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 309(b) and 301 of the Immigration and Nationality Act; 8 U.S.C. §§ 1409(b) and 1401.

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 Acting District Director, San Diego, California, 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 September 7, 1954 in Mexico. The applicant's father, [REDACTED], was a U.S. citizen born in California on July 23, 1924. The applicant's father passed away in 2004. The applicant's mother is a native and citizen of Mexico. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship pursuant to sections 309(b) and 301 of the Immigration and Nationality Act, 8 U.S.C. §§ 1409(b) and 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The acting district director denied the applicant's citizenship claim upon finding that the applicant first met [REDACTED] in 1999, and had therefore failed to prove that he was legitimated by his father prior to attaining the age of 18. On appeal, the applicant submits a copy of the results of a DNA test confirming that the applicant's father's sister is related to the applicant. The appeal is also accompanied by notarized letters from a number of family members and friends.

"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 1954.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Section 309(b) of the Immigration and Nationality Act, 8 U.S.C. § 1409(b), as enacted in 1952, provided, in relevant part,

(b) ... the provisions of section 310(a)(7) shall apply to a child born out-of-wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7), provided, in turn,

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 . . .

The AAO notes that the Act of July 31, 1946, Pub. L. 79-571, 60 Stat. 721 amended section 201 of the Nationality Act of 1940, 8 U.S.C. § 601, to include a specific provision for children of U.S. citizens who served in the U.S. Armed Forces during World War II. That provision, section 201(i) of the Nationality Act, 8 U.S.C. § 601(i), provided that

A person born outside the United States . . . of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of termination of hostilities in the present war . . . and who, prior to the birth

of such person, has had ten years' residence in the United States . . . at least five of which were after attaining the age of twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, this child must reside in the United States . . . for a period or periods totaling five years between the ages of thirteen and twenty-one years . . .¹

The applicant claims that he is the son of [REDACTED]. In support of his claim, the applicant submits *inter alia* a copy of results of a DNA test evidencing a 99% probability of a blood relationship with his aunt, [REDACTED] sister. In view of this evidence, the AAO finds that the applicant has established by a preponderance of the evidence that he was the son of [REDACTED]

The record suggests that the applicant's father served in the U.S. Armed Forces during World War II. *See* Form N600, Application for Citizenship; *see also* Photograph of applicant's father in uniform, photo of applicant's father's flag-draped coffin; letter dated April 4, 2005 from [REDACTED]. The AAO notes, however, that the record does not contain the applicant's father's certificate of military service or other military records. Nevertheless, on the basis of the evidence listed above, the AAO finds that section 201(i) of the Nationality Act of 1940 may be applicable to the applicant's case.

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).

In order to acquire U.S. citizenship, the applicant had to establish that his father "had ten years' residence in the United States . . . at least five of which were after attaining the age of twelve years." *See* Section 201(i) of the Nationality Act, *supra*. The only evidence in the record regarding the applicant's father's physical presence is a declaration signed by the applicant's aunt stating that he "lived in Calipatria, California his entire life" except for the time spent while serving in the military. The record does not contain any documentary evidence of the applicant's father's U.S. residence, such as employment, medical, school or travel records. The AAO notes that the applicant was born in Mexico in 1954. The evidence in the record is not sufficient to establish, by a preponderance of the evidence, that the applicant's father had the required U.S. residence.

The AAO therefore finds that the applicant has failed to meet his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the applicant did not reside in the United States until after attaining the age of 21. Nevertheless, Public Law 95-432, effective October 10, 1978, eliminated the physical presence requirement for retention of U.S. citizenship such that persons who had not yet reached the age of 26 as of the effective date were no longer subject to retention requirements. *See* 7 FAM 1133.2-2(d), 7 FAM 1133.5-13(a) and (c).