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U.S. Citizenship
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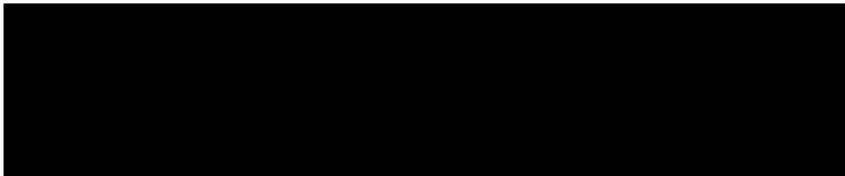


FILE: [REDACTED] Office: LOS ANGELES, CA Date: **AUG 17 2007**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on March 18, 1952. The applicant's father, [REDACTED] is a U.S. citizen born in California on July 28, 1923. The applicant's mother, [REDACTED] is a citizen of Mexico. The applicant's parents were married on March 2, 1951 in Mexico. The applicant presently seeks a Certificate of Citizenship, claiming that he acquired citizenship at birth from his father under section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his father met the residence requirement. The application was denied accordingly.

On appeal, the applicant maintains that he acquired U.S. citizenship at birth from his father and claims to have provided sufficient evidence to establish the required residence. The applicant, through counsel, contends that his father resided in the United States from his birth in 1923 until 1930 and from 1943 to the present. In support of his claim, the applicant submits a copy of his father's birth certificate, his father's school records for the years 1929-1930, a copy of his social security statement of earnings for the years 1946 to 1990, a declaration executed by his father, and a declaration executed by his father's friend.

"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 was born on March 18, 1952. Section 201(g) of the Nationality Act, 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

Section 201(g) of the Nationality Act states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In the present matter, the applicant must establish that his father resided in the U.S. for ten years between July 28, 1923 and March 18, 1952, and that five of those years occurred after July 28, 1939, when the applicant's father turned sixteen.

The evidence pertaining to the applicant's father's residence in the United States during the relevant time period consists of the following:

A California birth certificate reflecting that [REDACTED] was born on July 28, 1923.

School Records from [REDACTED] in Santa Monica, California, evidencing that [REDACTED] was a student there during the 1929-1930 school year.

Social Security records evidencing the applicant's U.S. employment from 1946 until 1952.

A declaration executed by [REDACTED] on April 10, 2007, stating that he resided in the United States from 1923 until December 1930, and from 1943 until the present. He further states that he entered the United States without inspection in 1943, not realizing at the time that he was a U.S. citizen entitled to work and live in the United States. He states that he lived with [REDACTED] in California from 1943 until 1946, and was employed as a farm worker. In 1946, he moved to his sister's house, also in California. He states that he frequently visited Mexico. In 1951, he was married in Mexico. He claims that his wife and children remained in Mexico until the 1970s. Lastly, he claims that he provided erroneous information about his U.S. residence in a 1973 petition.

A declaration executed by [REDACTED] on July 13, 2002, stating that he resided with [REDACTED] in Santa Monica, CA from 1943 until 1946.

A declaration dated June 16, 2003 executed by [REDACTED], the applicant's mother-in-law. She states that she first met [REDACTED] in 1943 in California.

The applicant's birth certificate, indicating that he was born on March 18, 1952 and reflecting that the birth was reported by his father on March 21, 1952.

The applicant's parents' marriage certificate, dated March 2, 1951.

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 finding by the Board of Immigration Appeals 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 notes that in a sworn statement executed in 1973, the applicant's father declared that he had resided in the United States from birth until "about" 1929 and that he re-entered the United States in 1951 by presenting his birth certificate. The sworn statement does not mention any residence or employment in the United States in the 1940s.

Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. AAO finds that the cumulative evidence presented in the present matter establishes by a preponderance of the evidence that the applicant's father resided in the U.S. from birth until December 1930, a period of 6 ½ years, and from 1946 to 1952, a period of 7 years. Notwithstanding the applicant's father's inadvertent statements in 1973, the AAO finds that the documentary evidence in the record supports

the claim that the applicant's father resided in the United States for the required ten years between 1923 and 1952, five of which were after he turned 16, between 1939 and 1952.

The AAO notes that the applicant was over the age of 26 on October 10, 1978, and was therefore not exempt from the retention requirements under the Act of Oct. 10, 1978, Pub. L. 95-432. The AAO further notes that, in this regard, if U.S. citizenship is lost, it may be restored by the taking of the Oath of Allegiance. *See* Section 324(d) of the Act, 8 U.S.C. § 1435(d). The applicant must therefore establish that he was continuously physically present in the United States or its outlying possessions for five years between the age of fourteen and twenty-eight, if begun before October 27, 1972, or for two years between the age of fourteen and twenty-eight. *See* Section 301(b) of the former Act, as amended in 1972 by Public Law 92-584; *see also* 7 FAM 1133.5-7. The record in this case suggests that the applicant complied with the retention requirements, as he has been in the United States since the early 1970s.

The AAO finds that the applicant has established by a preponderance of the evidence that his father resided in the United States for ten years prior to his birth, at least five years after the age of sixteen, as required by section 201(g) of the Nationality Act. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.