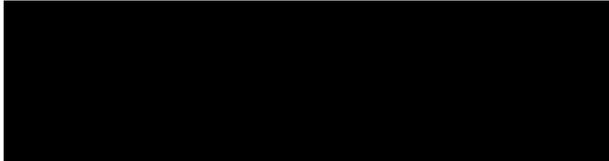




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

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FILE: [REDACTED] Office: HARLINGEN, TX Date: **AUG 29 2007**

IN RE: Applicant: [REDACTED]

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:  
[REDACTED]

**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 the matter 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 January 28, 1958. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on July 21, 1954. The applicant's father is a native-born U.S. citizen, born on February 9, 1936 in Santa Rosa, Texas. The applicant's mother became a naturalized U.S. citizen in 1997. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded the applicant had failed to establish that his father had the required physical presence in the United States. The district director thus found the applicant ineligible for citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), and denied the application accordingly.

On appeal, the applicant, through counsel, submits a brief contending that the district director erred in applying an incorrect standard of proof and denying the application.

"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 the present matter was born in 1958. Section 301(a)(7) of the former Act therefore applies to the present case.

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.

The applicant must thus establish that his father was physically present in the United States for at least ten years prior to January 28, 1958 (the applicant's date of birth), at least five of which were after February 9, 1950 (applicant's father's 14<sup>th</sup> birthday).

The record contains several affidavits, including affidavits from the applicant's father and mother. The record also includes the applicant's father's birth certificate (issued in 1948) and birth and baptismal certificate for other members of the family. Additionally, the record includes the applicant's father's selective service registration card (dated 1956), copies of receipts dated in 1957 in Texas, a copy of an insurance policy issued to the applicant at a Texas address covering one year between 1956 and 1957, a copy of the applicant's father's social security earnings statement.

The AAO 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 affidavits submitted consistently state that the applicant's father resided in the United States from 1936 until 1940, and from the mid 1940's to the present. The affidavits are also consistent, and detailed, with regard to the applicant's father's trips back and forth to Mexico in the late 1940's and 1950's, and his work as a laborer or farm-worker in the United States during that time. To the extent possible, the affidavits are corroborated by documentary evidence.

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 applicant in the present case has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.