



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: HARLINGEN, TX

Date: FEB 13 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the former  
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.

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 February 2, 1953 in Mexico. The applicant's father, [REDACTED] was born in Texas on September 7, 1926, and he is a United States citizen. The applicant does not assert, and the record does not reflect, that her mother, [REDACTED], is a U.S. citizen. The applicant's parents were married in Mexico on October 8, 1949. The applicant presently seeks a certificate of citizenship pursuant to 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 she acquired U.S. citizenship at birth through her father.

The district director found that, based on the evidence in the record, the applicant failed to establish that her father resided in the United States for ten years prior to the applicant's birth, at least five of which occurred after his fourteenth birthday, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant states that three of her sisters and her mother obtained documentation of their U.S. citizenship and permanent residence this year, and that another of her sisters obtained permanent residence in the United States in 1968. *Statement from Applicant on Form I-290B*, dated July 26, 2005.

The applicant submitted a record of her father's baptism; a copy of her parents' marriage certificate; a copy of her father's birth certificate; a copy of her father's death certificate; affidavits from her father's brother and friend; a record of the applicant's father's earnings from the U.S. Social Security Administration; documentation of the applicant's marriage and the birth of her children; a copy of the applicant's birth certificate, and; foreign language documents without English translations. The entire record was reviewed and considered in rendering this decision.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS*, 54 F.3d 605 (9<sup>th</sup> Cir. 1995).

"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 in 1953. Section 301(a)(7) of the former Act thus controls her claim to derivative citizenship.

Section 301(a)(7) of the former 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.

Upon review, the applicant has not submitted sufficient evidence to establish that her father was physically present in the United States for a period or periods totaling ten years, at least five of which were after he attained the age of fourteen years. Section 307(a)(7) of the former Act.

The applicant's father's brother (the applicant's uncle) stated that he and the applicant's father worked together "in the field" in the United States since they were small children in January 1940. *Statement from* [REDACTED], dated August 9, 2004. He provided that he and the applicant's father "worked very hard that year" picking cotton in El Ranchito, Texas. *Id.* He stated that he and the applicant's father came with the applicant's grandfather to stay in a ranch "for several months during the season." *Id.* He provided that he and the applicant's father "went up north for many years." *Id.* The applicant's uncle stated that the applicant's father started working in Texas in 1966. *Id.*

The statement from the applicant's uncle does not establish that the applicant's father resided in the United States for ten years prior to the applicant's birth. It is not clear if the applicant's father resided in Mexico and traveled to the United States for short durations to perform agricultural work, or if he resided in the United States. For example, when the applicant's uncle stated that the applicant's father "went up north," it is not clear if he meant that the applicant's father traveled from Mexico to the United States, or if he meant that the applicant's father traveled within the United States northward. The only date prior to the applicant's birth mentioned by the applicant's uncle is 1940, thus it is not clear if the applicant's father performed agricultural work in the United States every year after 1940, or intermittently. Nor does the statement reflect how long the applicant's father remained in the United States during each employment season. The applicant's uncle indicated that the applicant's father began working in Texas in 1966. However, as the applicant was born in 1953, her father's residence after that date is not relevant to whether he met the residency requirement of section 307(a)(7) of the Act prior to her birth.

The applicant's father's friend, [REDACTED] stated that he knew the applicant's father beginning in 1952, and they were coworkers and friends in the United States for many years thereafter. *Statement from* [REDACTED] dated March 1, 2004. However, as the applicant was born in 1953, Mr. [REDACTED] affidavit only addresses a time period of approximately one year prior to the applicant's birth. Thus, Mr. [REDACTED] affidavit does not establish that the applicant's father was present in the United States for ten years prior to the applicant's birth.

The applicant provided a copy of a record of her father's earnings from the U.S. Social Security Administration. However, this document is limited to her father's earnings beginning in January 1966. As the applicant was born in 1953, this document is not probative of whether her father met the residency requirement of section 307(a)(7) of the former Act prior to her birth.

It is noted that the record contains some foreign language documents that are not accompanied by English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The applicant indicates that three of her sisters and her mother obtained documentation of their U.S. citizenship and permanent residence this year, and that another of her sisters obtained permanent residence in the United States in 1968. However, the current proceeding is a separate matter from those of her family members. The applicant bears the burden of submitting evidence into the current record to establish her

eligibility for the benefit sought. Thus, the fact that the applicant's siblings and mother were accorded immigration benefits does not show that the applicant's father met the residency requirement of section 307(a)(7) of the former Act.

Based on the foregoing, the applicant has not shown that her father was physically present in the United States for a period or periods totaling ten years, at least five of which were after he attained the age of fourteen years. Section 307(a)(7) of the former Act. For this reason, the application may not be approved.<sup>1</sup>

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant failed to establish by a preponderance of the evidence that satisfies the requirements of section 307(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> It is noted that the present application fails for a lack of evidence. The record does not affirmatively indicate that the applicant is ineligible for a certificate of citizenship. The dismissal of this appeal is without prejudice to the applicant, and she may file a new Form N-600 with additional evidence if she feels he may meet the requirements of section 307(a)(7) of the former Act.