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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: HARLINGEN, TEXAS

Date: FEB 26 2007

IN RE: Applicant: [REDACTED]

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:

[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 cursive script, 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on February 11, 1954. The applicant asserts that his mother, [REDACTED] was born in Texas on July 25, 1916, and she was a United States citizen. The applicant states that his father, [REDACTED], was born in Mexico, and he became a naturalized U.S. citizen on July 13, 1998. The applicant's parents were married in Mexico on March 9, 1953. The applicant 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 he acquired U.S. citizenship at birth through his mother.

The director found that the applicant failed to establish that his mother was born in the United States, such that she was a U.S. citizen. *Decision of the District Director*, dated August 27, 2004. The district director further commented that the applicant failed to submit documentation of his mother's presence in the United States prior to his birth. *Id.* The application was denied accordingly.

On appeal, counsel for the applicant asserts that the documentation in the record reflects that the applicant's mother was born in the United States, and that discrepancies noted by the district director were the results of clerical or translation errors. *Brief in Support of Appeal*, submitted September 24, 2004. Counsel further asserts that the applicant has submitted sufficient evidence to show that his mother was present in the United States for the requisite period prior to his birth. *Id.*

The record contains a brief from counsel; a copy of the applicant's mother's birth certificate; a copy of the applicant's mother's baptismal certificate; a copy and translation of the applicant's son's birth certificate; affidavits from the applicant's mother's cousins, nephews, and niece; a copy of the applicant's parents' marriage certificate; copies of documents in connection with the applicant's brother's Form N-600 application; a copy of the applicant's brother's naturalization certificate; a copy of the applicant's birth certificate, and; copies of the applicant's permanent resident card and identification documents. The entire record was 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 (9th 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 (9th Cir., 2000) (citations omitted). The applicant in this case was born in Mexico in 1954. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.¹

Section 301(a)(7) of the former Act states, in pertinent part that:

¹ It is noted that the district director referenced section 301(g) of the Act as the controlling law in the present matter. However, as noted above, due to the fact that the applicant was born in 1954, section 301(a)(7) of the former Act controls his claim to U.S. citizenship.

[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.

Upon review, the applicant has submitted sufficient evidence to show that his mother was a U.S. citizen. The district director observed that the applicant's mother's birth certificate contains a discrepancy, in that it notes that her date of birth was July 25, 1916, yet it provides that her baptismal certificate was entered on June 16, 1916, prior to her birth date. However, counsel points out that the baptismal certificate itself states that it was entered on September 16, 1916, and that the appearance of "06/16/16" on the birth certificate was a clerical error. The AAO finds this explanation reasonable, particularly in light of the fact that the correct date should have been written as "09/16/16," which could have plausibly been erroneously entered as "06/16/16." The AAO further notes that the date of the baptismal record contained in the birth certificate is a reference to the baptismal certificate itself, not a reference to an event that the birth certificate claims to describe. Thus, the baptismal certificate is the original document that notes the date of the applicant's mother's baptism, not the birth certificate. As the baptismal certificate notes a date of September 16, 1916, it is congruent with the date of birth contained elsewhere in the certificate, as well as the applicant's mother's birth certificate.

The district director found that the birth certificate for the applicant's son reflects that the applicant's mother was born in Wasco, California, not Hebbronville, Texas as claimed on the applicant's mother's birth certificate. However, as noted by counsel, the applicant's son's birth certificate only makes reference to the applicant's mother's "domicile." No where does the document indicate the applicant's mother's place of birth. Counsel correctly observes that "domicile" is one's current place of permanent residence, not one's place of birth. An indication that the applicant's mother resided in Wasco, California as of the date of birth of the applicant's son is not in conflict with the claim that the applicant's mother was born in Hebbronville, Texas.

Based on the foregoing, the AAO finds that the applicant has submitted sufficient evidence to show that his mother was a U.S. citizen at the time of his birth, as contemplated by section 301(a)(7) of the former Act.

However, the applicant has not provided sufficient evidence to show that his mother was 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," as required by section 301(a)(7) of the former Act.

The applicant has provided five affidavits from individuals who claim to have direct knowledge of the applicant's mother's presence in the United States prior to the applicant's birth, including the applicant's mother's cousins, nephews, and niece. However, while each of these affidavits are generally congruent with one another, they are very brief and lack adequate detail to show by a preponderance of the evidence that the applicant's mother was present in the United States for ten years prior to the applicant's birth, five of which were after she reached the age of 14. See section 301(a)(7) of the former Act.

For example, the applicant's mother's cousin, [REDACTED], stated that he resided next to the applicant's mother's parents in Hebbronville, Texas for approximately 15 years, yet he did not indicate that the

applicant's mother was residing there as well. Another of the applicant's mother's cousins, [REDACTED], stated that the applicant's mother resided in Hebronville, Texas until she was approximately 16 years old, and that thereafter she moved to Edcouch, Texas to care for her sibling's children. However, he did not provide details such as what other activities the applicant's mother was engaged in during the described periods, how often he saw her, or descriptions of other events during those long periods that would indicate his direct and ongoing knowledge of the applicant's mother's whereabouts. The applicant's mother's niece and nephews indicated that she resided in their household and cared for them when they were small children beginning in approximately 1934. However, while the applicant's mother's nephew, [REDACTED], suggested that she resided in his household continuously from 1934 until she married in 1953, the applicant's mother's niece [REDACTED], stated that the applicant's mother resided with her family "in the late 1930's and later in the 1940's and early 1950's." *Statement from [REDACTED]* dated January 18, 2003. Thus, the statements appear to be inconsistent, as the applicant's mother's niece suggests that the applicant's mother resided with them intermittently, while the applicant's mother's nephew suggested that she resided in his household continuously. The statements from the applicant's mother's niece and nephews lack sufficient detail to clearly establish the dates she resided with them.

It is noted that affidavits alone can be sufficient evidence to establish a fact by a preponderance of the evidence. However, such affidavits must contain adequate detail to clearly describe the alleged fact, and to establish the basis for the affiant's knowledge. As discussed above, the affidavits submitted by the applicant in the present matter lack sufficient detail to show the applicant's mother's presence in the United States by a preponderance. Thus, the applicant has not shown that his mother, prior to the applicant's birth, was physically present in the United States for a period or periods totaling ten years, at least five of which were after attaining the age of fourteen years. See section 301(a)(7) of the former Act. For this reason, the application may not be approved.²

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 he satisfies the requirements of section 307(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² It is noted that the present application fails for a lack of evidence, and 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 he may file a new Form N-600 with additional evidence if he feels he may meet the requirements of section 307(a)(7) of the former Act.