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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]

Office: HARLINGEN, TX

Date:

JAN 04 2007

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 28, 1967 in Mexico. The applicant's father, [REDACTED] was born in Rio Grande City, Texas on January 2, 1928. The applicant's mother, [REDACTED] was at the time of his birth, a citizen of Mexico and the record indicates that she remains a citizen of that country. The applicant's parents married on April 26, 1951. The applicant seeks a certificate of citizenship as a child born abroad to a U.S. citizen under section 301(a)(7) of the Immigration and Nationality Act, as amended.

"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 on May 28, 1967. Accordingly, he must establish his claim to U.S. citizenship under section 301(a)(7) of the Immigration and Nationality Act of 1952 (1952 Act), the applicable immigration statute in effect in 1967.

Section 301(a)(7) of the 1952 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.

The applicant must therefore demonstrate that his father was a U.S. citizen at the time of his birth and that his father met the physical presence requirements set forth above prior to the applicant's 1967 birth.

Based on the evidence of record, the district director concluded that the applicant had failed to establish that his U.S. citizen father had resided in the United States for ten years prior to his birth, as required by section 301(a)(7) of the 1952 Act. The application was denied accordingly.

The record contains the following evidence relating to the U.S. citizenship and residence of the applicant's father:

- A January 10, 2005 affidavit sworn by the applicant's aunt, [REDACTED] which states that she and her brother, [REDACTED] lived together in Weslaco, Texas from 1957 through 1963.

Birth and baptismal certificates for [REDACTED] indicating that he was born in Rio Grande City, Texas on January 2, 1928, as well as a birth registration card issued to him on December 27, 1977.

- Mr. [REDACTED] social security card and an identification card issued to him by the Texas Department of Public Safety.

- An August 29, 2005 affidavit, submitted on appeal, from [REDACTED] Mr. [REDACTED] aunt, who states that he was born in Rio Grande City, Texas. Ms. [REDACTED] asserts that her family and Mr. [REDACTED] worked in the Texas cotton fields from 1934 to 1946, and that, in 1950, Mr. [REDACTED] picked oranges in Donna, Texas and worked as an irrigator in the water district. She also relates that, following Mr. [REDACTED] marriage in Mexico in 1951, he returned to the United States and lived with her in Donna, Texas for six years before relocating to Rio Grande City, where he lived with his aunt [REDACTED] from 1957 through 1963.

Based on the above evidence, the AAO finds the applicant to have demonstrated that his father was a U.S. citizen at the time of his birth. This evidence is not, however, sufficient to establish that the applicant's father, prior to his birth, was physically present in the United States for the ten-year period required by section 301(a)(7) of the 1952 Act.

The record contains no documentary evidence to prove Mr. [REDACTED] presence in the United States. While the AAO notes the affidavits submitted by [REDACTED] and [REDACTED] they do not carry sufficient evidentiary weight to overcome the lack of any primary evidence regarding Mr. [REDACTED] time in the United States. Without any type of corroborating evidence – e.g., school, church, medical or tax records, correspondence, or employment records, including pay stubs/receipts – that would place the applicant's father in the United States prior to 1967, the statements submitted by Mr. [REDACTED] aunt and sister are insufficient proof of his physical presence in the United States.

The regulation at 8 C.F.R. § 322.3(b)(1)(vii) lists examples of the type of documentation required to establish the physical presence of U.S. citizen parents or grandparents in the United States, including school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations. When such evidence does not exist or is unavailable, the regulation at 8 C.F.R. § 103.2(b)(2)(i) requires the following:

If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In submitting affidavits in lieu of documentation, the applicant has not established that primary or secondary evidence of his father's presence in the United States does not exist or cannot be obtained. Therefore, the applicant has also failed to comply with the regulatory requirements that govern the submission of sworn statements in place of primary/secondary evidence. For this reason as well, the record does not establish that the applicant's U.S. citizen father met the physical presence requirements of section 301(a)(7) of the 1952 Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.