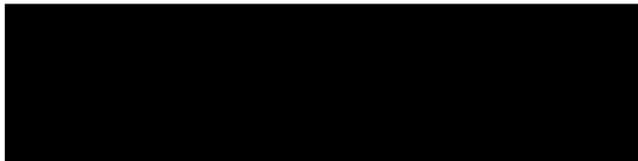


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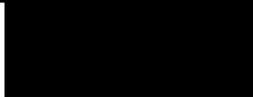
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: HARLINGEN, TEXAS

Date:

JAN 31 2007

IN RE:

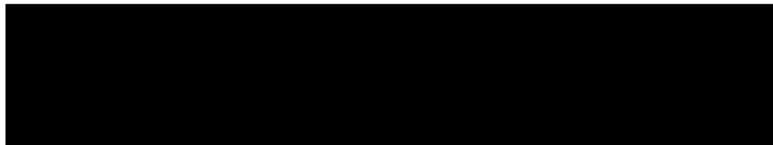
APPLICANT:



APPLICATION:

Application for Certificate of Citizenship under section 301 of the former Immigration and Nationality Act, 8 U.S.C. § 1401

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 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 August 21, 1966. The applicant's father, [REDACTED] was born in Texas on April 8, 1943, and he is a U.S. citizen. The applicant's mother, [REDACTED], was born in Mexico on January 26, 1941, and she is not a U.S. citizen. The record reflects that the applicant's parents were married on August 14, 1964. The applicant seeks a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded that the applicant failed to establish that his father was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant has shown by a preponderance that his father 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, thus the application should be approved. *Brief from Counsel*, dated April 8, 2005.

"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 the present matter was born in 1966. 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 district director concluded that the applicant failed to establish that his father 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," as required by section 301(a)(7) of the former Act. The district director noted that the applicant previously filed a Form N-600 application on September 27, 2002, which was denied on November 12, 2003. The district director commented that the applicant has not submitted new evidence of his father's presence in the United States with the present application, despite the fact that his prior application was denied on that basis.

The district director stated that the applicant's father was interviewed on February 3, 2005, and as in prior interviews, he was unable to recall the name of the school he allegedly attended in the United States when he was 10 years old. The district director further stated that the applicant's father claimed to have lived in the

United States for the first four years of his life, but that he has a sibling who was born "two or three years" after him in Mexico. Thus, the district director suggested that the applicant's father must have been in Mexico at the time his sibling was born. The district director did not comment on other testimony or evidence regarding the applicant's father's presence in the United States, or other periods of time during which the applicant's father claimed to be in the United States.

Upon review, the AAO has carefully examined testimony and evidence submitted to reflect the periods of time that the applicant's father has been present in the United States. Such evidence includes two sworn statements from the applicant's father; officer notes from two separate interviews of the applicant's father; copies of the applicant's father's birth and baptismal certificates; a copy of the applicant's father's U.S. resident citizen identification card from 1961; a social security withholdings report for the applicant's father; a statement from the applicant's mother; a statement from the applicant's aunt; a statement from the applicant's father's friend, and; a statement from the applicant's father's employer. Considered in its totality, this evidence shows by a preponderance that the applicant's father met the residency requirement of section 301(a)(7) of the former Act.

The district director stated that the applicant failed to provide new evidence of his father's presence in the United States since his prior Form N-600 application. However, the AAO notes that the applicant has entered new evidence into the current record, including a copy of his father's U.S. resident citizen identification card from 1961 and new affidavits from the applicant's father, the applicant's mother, and the applicant's aunt.

The district director emphasized that the applicant's father was unable to recollect the name of the school he allegedly attended in the United States when he was 10 years old, thus calling into question whether he in fact spent a period of about one year in the United States around 1953 as claimed. However, the AAO finds it reasonable that the applicant's father does not remember the name of a school he attended when he was 10 years old, particularly in light of the fact that he was age 61 as of his most recent interview, and thus he attended the school over 50 years ago. It is further noted that the applicant's father came from Mexico to attend the school in the United States at an early age, potentially causing language and cultural challenges that reasonably obscure one's ability to commit English-language names to memory. The applicant's father has consistently described other facts regarding his presence in the United States at age 10. The applicant's father's sister provides an affidavit that further corroborates the applicant's father's stay in the United States for approximately one year at age 10.

The district director suggests that the applicant's father returned to Mexico prior to age four, as one of his siblings was born in Mexico when he was two or three years old. Thus, the district director suggests that the applicant's father was not present in the United States from his birth until age four. However, the district director's observation is based on speculation. There is no evidence or testimony in the record that contradicts the applicant's father's consistent representations that he was in the United States until age four. When questioned regarding his sibling's birth, he stated that he remained in the United States while his parents traveled to Mexico. This testimony is plausible, as the applicant's father stated that members of his family lived in a Mexican town, approximately 30 minutes from his residence in the United States in Mission, Texas. Thus, the record suggests that the applicant's father could have remained close to his parents even if they traveled to Mexico for the birth of their child. The record contains no indication that the applicant's father was questioned regarding who cared for him while his parents went to Mexico. The AAO will accept the applicant's father's consistent testimony on this fact in the absence of evidence to the contrary.

The applicant has submitted evidence that his father was present in the United States from his birth until age four; for approximately one year in 1953, and; from approximately December 1959 until the present with some interruptions. The applicant's father has provided some inconsistencies in his testimony regarding brief

interruptions in his stay in the United States between December 1959 and the applicant's birth on August 21, 1966. For example, in his interview on September 10, 2003, he provided that he resided in Mexico with his wife for four months from August to November 1964. In his statement of February 2, 2005, he indicated that he visited his family in Mexico for four months from approximately May to September 1961. However, in his interview in connection with the present application, the applicant's father indicated that his longest stay in Mexico after 1961 was approximately two months. Yet, if both four-month periods are subtracted, the applicant's father still accrued approximately 11 years of presence in the United States prior to the applicant's birth, six of which were after the age of 14. Accordingly, the applicant has shown by a preponderance that his father meets the residency requirement of section 301(a)(7) of the former Act.

Based on the foregoing, the applicant has shown that he is a citizen of the United States, and he is eligible for a certificate of citizenship pursuant to section 301(a)(7) of the former Act.

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 applicant has met his burden. Accordingly, the district director's decision will be withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.