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U.S. Citizenship  
and Immigration  
Services

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MAY 18 2007  
Date:

FILE: [REDACTED] Office: HARLINGEN, TX

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:

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.

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 sustained.

The record reflects that the applicant was born in Mexico on September 3, 1975. The applicant claims that his father, [REDACTED] was born in Texas February 9, 1927, and that he is a United States citizen. The applicant does not assert, and the record does not support, that his mother, [REDACTED] was a U.S. citizen. The applicant's parents were married in Mexico on August 9, 1960. 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 father.

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

On appeal, the applicant states that he is submitting an additional affidavit from a family relative, and he requests that the application be approved accordingly.

The applicant submitted: statements from the applicant's father's cousin, friend, and two of his relatives; a copy of the applicant's father's voter registration in Edinburg, Texas, valid from January 1, 2004 to December 31, 2005; a copy of the applicant's father's birth certificate; a copy of the applicant's birth certificate; a copy of the applicant's father's social security card and Texas identification card; a copy of the applicant's father's baptismal certificate; a copy of the applicant's father's marriage certificate, and; a copy of the applicant's mother's death certificate. The entire record was reviewed 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 1975. Section 301(a)(7) of the former Act thus controls his 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.

The applicant must therefore establish that his U.S. citizen father met the physical presence requirements prior to the applicant's birth.

Upon review, the applicant has provided sufficient evidence to show that, prior to his birth, 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 the applicant's father attained the age of fourteen years. Section 301(a)(7) of the former Act. The applicant submitted statements from individuals who claim to have knowledge of the applicant's father's presence in the United States. While these statements are generally brief, they are consistent and contain adequate detail to show that the applicant's father was present in the United States for a full ten years prior to the applicant's birth in 1975, and least five of such years occurring after the applicant's father attained fourteen years of age.

For example, the applicant's father's cousin, [REDACTED] stated that he knew the applicant's father beginning in 1937, and that the applicant's father resided in Karnes City, Texas until the end of 1943. *Statement from* [REDACTED] dated July 11, 2005. While Mr. [REDACTED] referenced subsequent addresses of the applicant's father, he did not provide the dates or details that would indicate when the applicant's father was in the referenced locations. *Id.* The statement from Mr. [REDACTED] accounts for a period of residence of approximately seven years. As the applicant's father reached age 14 on February 9, 1941, the letter from Mr. [REDACTED] accounts for approximately two years of residence after the applicant's father reached fourteen years of age.

The applicant's father's relative, [REDACTED] submitted a statement providing that he knew the applicant's father beginning in 1951. *Statement from* [REDACTED] dated December 27, 2003. He stated that he saw the applicant's father on a daily basis, as they performed agricultural work together around [REDACTED], Texas. *Id.* He provided that he gave the applicant's father work and a place to reside, and they remained neighbors for many years. *Id.* Mr. [REDACTED]'s letter reflects that the applicant's father was present in the United States in 1951, and for an indefinite period afterwards.

Another of the applicant's relatives, [REDACTED] stated that he knew the applicant's father beginning in 1951. *Statement from* [REDACTED] dated December 27, 2003. He described some details of the applicant's father's activities, including his relationship with the applicant's mother and the fact that Mr. [REDACTED] and the applicant's father performed agricultural work together. *Id.* Mr. [REDACTED] provided a second statement in which he discussed the difficulty he and the applicant were having in locating individuals who could attest to the applicant's father's presence in the United States prior to the applicant's birth, as most such people either moved or died. *Statement from* [REDACTED] dated April 1, 2005. He stated that he knows that the applicant's father was born and raised in Atascosa County, Texas. *Id.* He indicated that there was no school in the ranch where he and the applicant's father used to work. *Id.* He further provided that he moved with his parents at an unknown time, and he did not see the applicant's father again until 1960 when the applicant's parents married. *Id.* He explained that, where he and the applicant's father resided, it was common practice to not visit a doctor or register births, and that they didn't have a car. *Id.* Mr. [REDACTED] did not provide sufficient detail to establish that the applicant's father was present in the United States continuously from 1951 to 1960. However, he sufficiently described the applicant's father's activities to show that he was in the United States around 1951 and for an indefinite period afterwards.

The applicant's father's friend, [REDACTED] stated that she knew the applicant's father since 1955, as the applicant's father worked with her husband performing agricultural work in Hidalgo, Texas. She stated that she saw the applicant's father on a daily basis, yet she failed to reference any dates or time periods that reflect the length of time the applicant's father was in the United States after she first met him in 1955.

However, Ms. [REDACTED] provided enough detail to show that the applicant's father was present in the United States in 1955, and for an indefinite period afterwards.

The applicant's father was born in the United States on February 9, 1927. It is noted that the Texas Department of Health, Bureau of Vital Statistics, found sufficient evidence to issue a birth certificate for the applicant's father on January 14, 2003. The AAO finds no cause to challenge the determination of the Texas Department of Health that the applicant's father was born in the United States. The applicant's father was baptized in Texas on April 16, 1927. Thus, the record reflects that the applicant's father was present in the United States from February 9, 1927 to April 16, 1927. Such fact is in accord with Mr. [REDACTED] assertion that the applicant's father was born and raised in Atascosa County, Texas.

In the present proceedings, the applicant bears the burden to establish relevant facts by a preponderance of the evidence. 8 C.F.R. 341.2(c). Affidavits alone may establish a fact by a preponderance of the evidence when they are sufficiently detailed, internally consistent, and consistent with the remaining documentation in the record.

The AAO finds that the statements submitted by the applicant contain one inconsistency. Specifically, Mr. [REDACTED] references the fact that the applicant's parents were married in 1959, when their marriage certificate and other evidence in the record states that they were married on August 9, 1960. Yet, this inconsistency is deemed minor, as the applicant's parents' marriage occurred approximately 43 years prior to the date that Mr. [REDACTED] issued his statement, and the difference of one year is not found to be significant. Thus, the AAO finds that the discrepancy does not undermine the evidentiary value of the statement from Mr. [REDACTED].

In summary, the applicant has shown that his father was in the United States from February 9, 1927 to April 16, 1927, and from 1937 until the end of 1943. These periods total at least seven years, two years of which occurred after the applicant's father reached fourteen years of age. Given the consistent descriptions of the applicant's father's activities in the United States beginning in 1951, 1955, and for a period afterwards, the applicant has shown by a preponderance of the evidence that his father was present in the United States for at least an additional three years during this time, all of which were after he reached the age of fourteen years. Thus, the applicant has submitted sufficient evidence to show by a preponderance of the evidence that his father was present in the United States prior to his birth for a period or periods totaling not less than ten years, at least five of which were after he attained the age of fourteen years, as required by section 301(a)(7) of the former Act.

As noted above, 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. Based on the foregoing, the AAO finds that the applicant has met his burden. Accordingly, the applicant is eligible for citizenship under section 301(a)(7) of the former Act, and the appeal will be sustained.

**ORDER:** The appeal is sustained.