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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: EL PASO, TX Date: **MAY 23 2007**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1401(a)(7).

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, 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 26, 1985 in Mexico. The applicant's father, [REDACTED], was born in El Paso, Texas. The applicant's mother, [REDACTED] was a citizen of Mexico at the time of the applicant's birth and the Form N-600, Application for Certificate of Citizenship, indicates that she retains that citizenship. The applicant's parents married on August 29, 1984. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father.

"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 on February 26, 1985. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1985.

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 record contains a copy of [REDACTED]'s birth certificate, which establishes that he was born in El Paso, Texas; a copy of the applicant's birth certificate proving that he was born in Mexico; and a copy of the marriage certificate for the applicant's parents that establishes his mother as a citizen of Mexico. Therefore, the applicant has demonstrated that he was born outside the geographical limits of the United States to parents, one of whom was a U.S. citizen and the other a national of a third country. The only issue that remains before the AAO is whether [REDACTED], prior to the applicant's birth, was physically present in the United States for a period of at least ten years, five of which followed his 14th birthday.

To establish [REDACTED]'s presence in the United States for the requisite period prior to his birth, the applicant has submitted copies of:

- Affidavits sworn by [REDACTED]'s aunt, [REDACTED], and [REDACTED] mother, [REDACTED]. Each affidavit attests that [REDACTED] spent the first years of his life in Mexico but moved to the United States when he was five or six years old to attend school and never returned to Mexico, except to visit.
- Photographs, unidentified as to subject, location or date.
- Records from the following El Paso, Texas schools:

- The Guardian Angel parochial school, showing [REDACTED] was a student there for the 1971-1972 and 1972-1973 school years and that he previously attended Queen of Peace parochial school, also located in El Paso Texas;
 - The Holy Family parochial school showing [REDACTED] as a student from September 6, 1973 until June 3, 1977;
 - The El Paso Public Schools, Grades 9-12, showing [REDACTED]; attended Irvin High School for the 1979-80 fall semester, that he withdrew on January 25, 1980 and that the last school attended was in Juarez; and
 - The Lydia Patterson Institute, certifying that [REDACTED] was a full-time student from March 12, 1980 until the fall of 1981.
- A March 3, 1977 partnership agreement between [REDACTED] father, and [REDACTED] regarding a restaurant and commercial kitchen in Meadow Vista, New Mexico.
 - A training certificate issued to [REDACTED] on February 26, 1988 by Superior Training Services in Phoenix, Arizona for completion of an Advanced Tractor – Trailer Driver's Course.
 - A record of [REDACTED] social security earnings for the period, 1985 – 2005, showing income for all years but 1986 and 1998.

The AAO has reviewed the above documentation and finds the applicant to have provided insufficient proof that his father lived in the United States for at least ten years prior to his birth, five of which followed his father's 14th birthday. The school records for Guardian Angel and Holy Family parochial school establish Mr. [REDACTED] presence in the United States for six years, 1971 through 1977; those for Irvin High school and the Lydia Patterson Institute demonstrate, at best, another two years of physical presence. The photographs, as they are not identified as to subject, date or location, are not proof of [REDACTED] presence in the United States. The 1977 partnership agreement between [REDACTED] and his sister, [REDACTED] proves only that that the applicant's grandfather and great aunt were partners in a New Mexico restaurant to be operated by [REDACTED]. The document does not indicate that the business arrangement between [REDACTED] father and aunt involved [REDACTED] or required his presence in the United States. [REDACTED] Superior Training Services certificate and his record of social security earnings document [REDACTED] presence in the United States during years that postdate the applicant's birth and, therefore, do not satisfy the requirements of 301(a)(7) of the Act. Although the social security record reports minimal income for 1985, there is no indication that it was earned prior to the February 26, 1985 birth of the applicant. Accordingly, the record establishes that [REDACTED] lived in the United States for a total of eight years, two of which followed his 14th birthday.

The AAO notes that the affidavits sworn by [REDACTED] his aunt and mother each attest that he has lived in the United States since he first arrived in approximately 1970, when he was five or six years old. The record, however, supports their claims regarding [REDACTED] physical presence in the United States only for the periods documented by the submitted school records. In the absence of any other documentation, e.g., employment, medical, church, tax/financial, census or other records, that would place [REDACTED] in the United States for the period claimed, the affidavits are insufficient to establish that he was physically present in the United States for more than eight years prior to the applicant's birth. Going on record without

supporting documentation is not sufficient to meet the applicant's burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the reliability of the affidavits is comprised as they are not entirely consistent with the school records submitted by the applicant. The El Paso Public Schools record establishing [REDACTED]'s attendance at Irvin High School for the fall semester of the 1979-1980 school year identifies the school previously attended as [REDACTED]. Thus it conflicts with the accounts of [REDACTED] and his aunt that state he went directly from Holy Family parochial school to Irvin High School. Moreover, it undermines the statements made by all three affiants that, after he arrived in the United States in 1970, [REDACTED] never returned to Mexico except for visits. [REDACTED]'s affidavit also indicates that he attended the eighth and ninth grades at Irvin, while the El Paso Public Schools, Grades 9-12, record reports that his attendance was limited to the 1979-1980 fall semester. The AAO also notes that [REDACTED]'s aunt, [REDACTED], claims that prior to enrolling [REDACTED] in the Guardian Angel parochial school, she placed him at the Magoffin school. However, the Guardian Angel school record indicates that [REDACTED] previously attended Queen of Peace parochial school. These unresolved inconsistencies raise questions regarding the accuracy of the information provided by the submitted affidavits. For this reason as well, the AAO will not accept them as proof of [REDACTED]'s extended physical presence in the United States.

As previously discussed, the record does not establish that the applicant's U.S. citizen father, prior to his birth, was physically present in the United States for at least ten years, five of which followed his 14th birthday, as required by section 301(a)(7) of the 1952 Act. Accordingly, the appeal will be dismissed.

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 not met his burden.

ORDER: The appeal is dismissed.