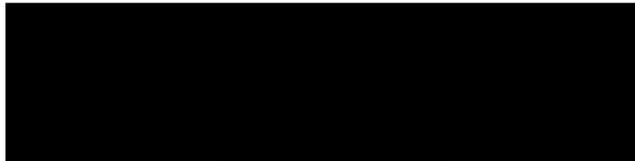


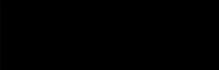


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE:



Office: HARLINGEN, TEXAS

Date: MAY 29 2007

IN RE:

Applicant:



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 dismissed.

The record reflects that the applicant was born in Mexico on August 1, 1975. The applicant's father, [REDACTED], was born in the United States on May 6, 1951, and he is a U.S. citizen. The applicant does not assert, and the record does not support, that his mother is a U.S. citizen. The applicant's parents were married in Texas on March 11, 1970, prior to the applicant's birth. 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 reached fourteen years of age, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant indicates that he is submitting additional evidence to establish his father's presence in the United States.

"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 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 father was present in the United States for ten years between May 6, 1951 and August 1, 1975, five of which occurred between May 6, 1965 and August 1, 1975. Section 301(a)(7) of the former Act. Upon review, the applicant has not provided sufficient evidence to show that his father met the residence requirements of section 301(a)(7) of the former Act.

The applicant provided a copy of his father's birth certificate which reflects that his father was born in Texas on May 6, 1951. The applicant submitted a copy of his father's baptismal certificate that states that the applicant's father was baptized in Texas on July 22, 1951. These two documents suggest that the applicant's father was present in the United States for at least three months from the time of his birth.

The applicant submitted a copy of his parents' marriage certificate that reflects that they were married in Texas on March 11, 1970. However, the applicant has not explained whether his father was residing in the United States at the time of his marriage, and if so, where he resided and for how long.

The applicant submitted copies of wage and tax information for his father that supports that his father worked in the United States from 1973 until the applicant's birth. This documentation supports that the applicant's father was present in the United States during a period of approximately two years and eight months immediately prior to the applicant's birth.

The record contains a statement from the applicant's father in which he stated that he has resided in the United States "since [he] was very young." *Statement from Applicant's Father*, dated January 5, 2006. The applicant's father provided that when he was "younger" he used to "work in the fields and [he] would go up north to work." *Id.* The applicant's father did not specify the dates that he references. Nor did he indicate whether he was residing in Mexico and going "up north" to the United States during the referenced period, or whether he actually resided in the United States. *Id.* The applicant's father's statement lacks sufficient detail to establish the period of time he was in the United States prior to the applicant's birth.

The record contains a statement from the applicant's aunt in which she explains that she has known the applicant's father since 1965. *Statement from [REDACTED]* dated January 4, 2006. She provided that the applicant's father was "working in the fields" when he met her sister, yet she did not indicate where the referenced fields were located, or where the applicant's father resided at the time. *Id.* The applicant's aunt noted that the applicant's mother lived in Mexico, which suggests that the applicant's father was also residing in Mexico during the referenced period. *Id.* The applicant's aunt stated that the applicant's parents married in 1970, and that the applicant's father "kept living in the U.S." and the applicant's mother lived in Mexico. *Id.* The statement from the applicant's aunt suggests that the applicant's father began residing in the United States around 1970 and he continued thereafter, yet it lacks details such as when the applicant's father began residing in the United States, where exactly he resided, where he worked, and references to other events that establish that the applicant's aunt has first-hand knowledge of the applicant's father's presence in the United States prior to the applicant's birth. At most, the statement from the applicant's aunt supports that the applicant's father was present in the United States for a period of approximately five years prior to the applicant's birth, from 1970 onward.

The record contains a second statement from the applicant's aunt in which she states that the applicant's father resided with her in Mission, Texas from March 1974 to February 1993. *Undated Statement from [REDACTED]* As the applicant was born on August 1, 1975, this statement supports that the applicant's father was present in the United States for one year and five months prior to the applicant's birth.

The record contains a statement from an individual named [REDACTED]. [REDACTED] stated that he has known the applicant's father since 1964, as the applicant's father resided with [REDACTED]'s uncle. *Statement from [REDACTED]* dated August 9, 2005. However, [REDACTED] did not state where his uncle and the applicant's father resided, thus the statement does not show that the applicant's father was residing in the United States during the referenced period.

The applicant submitted evidence that relates to his father's presence after the applicant was born. However, such evidence does not show that the applicant's father was present in the United States for ten years prior to the applicant's birth, as required by section 301(a)(7) of the former Act.

In summary, the applicant has submitted evidence to support that, prior to his birth, his father was present in the United States for a period of approximately three months commencing on the date of his father's birth, and a period of approximately five years from 1970 until August 1, 1975. This aggregate period of approximately five years and three months falls short of the ten years of presence required by section 301(a)(7) of the former Act. Thus, the applicant has not shown that his father met the residency requirements of section 301(a)(7) of the former Act, and the present application may not be approved.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in the present matter. The appeal will therefore be dismissed.¹

ORDER: The appeal is dismissed.

¹ It is noted that the present application fails for a lack of evidence. 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 301(a)(7) of the former Act.