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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FE

FILE:

Office: HOUSTON, TX

Date:

NOV 21 2007

IN RE:

Applicant:

APPLICATION:

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

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, Houston, 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 January 30, 1960 in Mexico. The applicant claims that his father (██████████), was born on February 28, 1936 in Brownsville, Texas. The applicant's mother, (██████████), is, according to the Form N-600, Application for Citizenship, a citizen of Mexico. The applicant's parents married on August 19, 1959. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

Counsel indicates on the Form I-290B, Notice of Appeal to the Administrative Appeals Office, filed on October 10, 2006, that she will submit a brief and/or additional evidence within 30 days. As no brief or additional evidence is contained in the record of proceeding, the AAO, on November 13, 2007, the AAO contacted counsel for copies of any additional materials submitted in support of the appeal. On November 13, 2007, counsel responded that she had filed the additional evidence with the Form I-290B and submitted copies of evidence already contained in the record. Accordingly, the record will be considered complete.

"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 January 30, 1960. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the Immigration and Nationality Act (the Act), as amended, the applicable immigration statute in effect in 1962.

Section 301(a)(7) of the 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 district director found the evidence of record insufficient to establish that the applicant's father, Mr. (██████████), was born in the United States or that, prior to the applicant's birth, he had been physically present in the United States for periods totaling at least ten years. She noted the evidence submitted by the applicant, including the delayed 1990 registration of (██████████)' birth and several affidavits, but found it insufficient to establish either his father's U.S. birth or residence. Accordingly, the district director denied the Form N-600. *District Director's Decision*, dated September 11, 2006.

On appeal, counsel contends that the applicant has established that his father was born in the United States and was also physically present for the required ten year period prior to his birth. In support of counsel's claims, the record offers the following evidence: a Delayed Certificate of Birth for (██████████) issued by the State of Texas, certified on August 6, 1990; an Affidavit to Birth Facts sworn by (██████████), dated March 22, 1988; three affidavits sworn by (██████████), dated May 13, 2004, April 17, 2006 and September 26, 2006; a statement regarding (██████████) birth from (██████████) who states she is his older sister, dated October 9, 2006; two affidavits sworn by (██████████) who performed farm labor with Mr. (██████████); one undated and the other dated September 29, 2006; (██████████) social security earnings statement for the period 1954-2006, issued by the Social Security Administration (SSA) in Victoria, Texas; an affidavit

concernin _____ residency sworn by _____ who states she is _____ sister-in-law, dated January 8, 2004; and a copy of a Certificate of Citizenship for _____

The AAO first turns to the issue of whether the record establishes that _____ was born in the United States.

Although the AAO notes the district director's concerns regarding the significantly delayed registration of _____ birth, the applicant's Mexican birth certificate identifying _____ as a citizen of Mexico and _____ SSA earnings statement that indicates he was born in Mexico, it finds the record to establish Mr. _____' birth in the United States. The U.S. birth certificate issued to _____ by the State of Texas, supported by the 1988 affidavit sworn by _____, is sufficient to establish his birth in the United States. While the AAO does not find credible _____ claim that U.S. involvement in World War II, which began in 1941, was the reason his parents failed to register his 1936 birth, the significant delay in the registration of _____' birth does not constitute evidence that he was not born in the United States. Neither are the applicant's Mexican birth certificate or _____' SSA earnings statement reliable documentation of the location of _____ place of birth. The AAO notes that in her affidavit _____ attests that she has direct knowledge of _____' birth in 1936 as she was then a friend and neighbor of the applicant's parents in Brownsville, Texas, and has known _____z since he was born. The AAO also notes the statement from _____ who indicates that she, _____ older sister and then 18 years of age, assisted at his birth on February 28, 1936 in Brownsville. While the AAO does not find the record to document the sibling relationship between _____ and the applicant's father, it does note that _____ statement indicates that a _____' was present at her brother's birth. Accordingly, the AAO finds the record, by a preponderance of evidence, to establish that _____ was born a U.S. citizen.

The record does not, however, demonstrate that _____z was physically present in the United States for a total of ten years prior to the applicant's 1960 birth, five of which followed _____' 14th birthday. While the AAO acknowledges the potential difficulty of obtaining proof of _____z' presence in the United States prior to 1960, that difficulty does not remove the burden of proof from the applicant in this matter. The AAO finds that the evidence submitted by the applicant to establish his father's presence in the United States fails to demonstrate more than _____ 1936 birth in Brownville, Texas.

In his April 17, 2006 affidavit, _____ states that he obtained a social security card in 1954. However, for the period 1954 – 1960, the social security earnings statement in the record indicates income only for the years 1954 and 1955. Not until 1961 does the earnings statement report regular annual income for Mr. _____z. By themselves, the earning totals for 1954 and 1955 do not establish that _____ was actually living in the United States during this period.

The affidavits submitted by the applicant also fail to establish _____' presence in the United States for the specified period of time. The first affidavit sworn by _____ states only that he knew or had met _____ during the period 1948 to 1956 in Brownsville and Woodsboro, Texas, not that _____ resided in these locations during the specified period. Mr. _____ second affidavit, dated September 9, 2006, indicates that he met _____ in the Bonnie View and Bayside cotton fields during the years 1949-1951 and that they went to the local theater on Saturday afternoons. Again, _____ does not state that _____ was living in the United States during the period he indicates.

The affidavit sworn by [REDACTED], who indicates that she was married to [REDACTED]'s older brother, reports that she met [REDACTED] in 1947 in Brownsville, Texas and that he lived in Brownsville until 1953 when he moved to Harlingen, Texas to live with another of his brothers. [REDACTED] also states that between 1954 and 1959, she and her husband frequently visited [REDACTED] in Moline and Rock Island, Illinois where he was a migrant farm worker. In 1960, Ms. Garcia reports that [REDACTED]'s mother died and, thereafter, he returned to live in Texas. While the AAO notes [REDACTED]'s statement, it does not find it to provide information consistent with that offered by [REDACTED] affidavits.

[REDACTED] indicates that between 1947 and 1953 that [REDACTED] lived in Brownsville, Texas and that when his parents began traveling back and forth between Mexico and Texas he went to live with his uncle [REDACTED] and his wife who also resided in Brownsville. Mr. [REDACTED] in his April 17, 2006 affidavit, reports that between 1948-1951, he lived not with his uncle, [REDACTED] but with his brother [REDACTED] and his wife, [REDACTED] in the home of [REDACTED]'s father. Ms. [REDACTED] further asserts that between 1954 and 1959, she and her husband frequently visited [REDACTED] in Illinois where he was a farm laborer. Mr. [REDACTED] affidavit, dated May 13, 2004, indicates that between 1947 and 1957, while he traveled to Montana, Wyoming and Michigan as a farm laborer, he also continued to work in Brownsville where he picked cotton during the fall, winter and spring seasons. His April 17, 2006 affidavit reports that during the period 1951-1955, he worked in Wyoming, Indiana, Michigan, Florida and Missouri. In none of his affidavits does [REDACTED] indicate that he lived or worked in Illinois. In that the record offers no evidence that would resolve these apparent discrepancies, the AAO does not find [REDACTED]'s statement to be credible evidence of [REDACTED] presence in the United States.

[REDACTED]'s three affidavits outlining his presence in the United States offer a generally consistent account of his U.S. residence, with a single exception. In his 2004 affidavit, [REDACTED] contends that he was present in the United States from his birth until 1959, when, for the first time, he traveled to Mexico. However, Mr. [REDACTED]'s April 17, 2006 affidavit indicates that he began traveling back and forth to Mexico in 1955. In that [REDACTED]'s physical presence in the United States from 1936 until 1955, if established, would still satisfy the requirements of section 301(a)(7) of the Act, the AAO does not find the record's failure to resolve this discrepancy critical to its review of the record.

However, while [REDACTED] has provided consistent statements regarding his U.S. residence between 1936 and 1955, the record offers no credible evidence to support his claims, beyond the SSA earnings statement reporting income for the years 1954 and 1955. Simply going on record is not sufficient to meet the applicant's burden of proof in this matter. *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)). The AAO notes that in the Affidavit to Birth Facts sworn by [REDACTED] states that [REDACTED] went to school with her children "after they grew up." However, the applicant has repeatedly attested that he did not attend school, except sporadically during the period 1944-1945/46, when it rained and he could not work in the fields. The AAO will not, therefore, accept [REDACTED]'s testimony regarding the applicant's school attendance in Texas. Accordingly, the applicant has failed to demonstrate that his father was physically present in the United States for ten years prior to his birth, five of which followed his father's 14th birthday, as required by section 301(a)(7) of the Act. The appeal will be dismissed.

While the AAO notes [REDACTED]'s claim that all of his children, other than the applicant, are now U.S. citizens, the applicant has submitted no evidence to establish that this is the case. The record contains a Certificate of Naturalization for an [REDACTED], but fails to provide any documentation that

would establish her as one of [REDACTED]' children. Moreover, the AAO notes that, in the present matter, it is limited to the evidence contained in the record of proceeding, which, as previously noted, does not demonstrate that [REDACTED] was present in the United States for the specified period. Each petition filing is a separate proceeding with a separate record and Citizenship and Immigration Services is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d).

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 in this proceeding.

ORDER: The appeal is dismissed.