

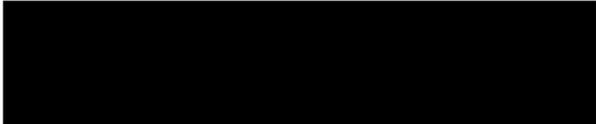
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:  Office: CHICAGO, IL Date: **NOV 27 2007**

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to section 301(a)(7) of the Immigration and Nationality Act (the Act), 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 5, 1959 in Mexico. The applicant's parents, as stated in his birth certificate, are [REDACTED]. The applicant's parents were married in Mexico on July 13, 1940. The applicant's father is a native-born U.S. citizen, born on April 14, 1922 in Chicago, Illinois. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301 of the Act, 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The director denied the applicant's claim finding, in relevant part, that he had failed to provide evidence to establish that his father had the required physical presence in the United States. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he provided sufficient evidence to establish that his father was physically present in the United States for the requisite period prior to his birth.

"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 1959. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore the applicable law in this 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 applicant must thus establish that his father was physically present in the United States for at least ten years prior to June 5, 1959 (the applicant's date of birth), at least five of which were after April 14, 1936 (applicant's father's 14th birthday).

The record includes the applicant's birth certificate, the applicant's father's birth and baptismal certificates, the applicant's parent's marriage certificate. The record also includes an affidavit executed by the applicant's fathers, an employment letter certifying the applicant's father's employment from 1952 to 1954, and a social security statement verifying, in relevant part, the applicant's father's employment for the years 1952, 1953 and 1954. The record further contains affidavits by the applicant's uncle and his father's friends.

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that his father

was present in the United States for ten years prior to his birth, five of which were after attaining the age of 14. The evidence in the record is consistent and detailed with respect to the applicant's father's presence in the United States from 1922 to 1924 and from 1952 to 1954. The AAO is not persuaded that the applicant's father was physically present in the United States from 1954 to 1959. The affidavits submitted by the applicant indicate that his father was working at a family grocery store until the 1960's. The AAO notes that the applicant was born in Mexico in 1959. The AAO further notes that the social security statement submitted indicates no employment income for the years 1955 to 1960. The AAO notes that the record contains affidavits indicating that the applicant's father worked, without remuneration, at a family grocery store. Nevertheless, the affidavits submitted do not provide a detailed or consistent account of the applicant's father's employment, travel or residence during that time. The AAO thus finds that the applicant has failed to establish that it is "more likely than not" that the applicant was physically present in the United States from 1955 to 1959.

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). There is no documentary evidence in the record to establish that the applicant's father was present in the United States before 1952 or between 1954 and 1959. Affidavits alone may serve as sufficient evidence to show a fact by a preponderance of the evidence only when they are detailed and consistent. Therefore, the applicant has failed to meet his burden of proof to establish that his father met the physical presence requirement of section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7). His appeal will be dismissed.

ORDER: The appeal is dismissed.