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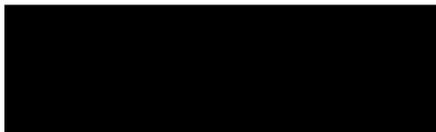
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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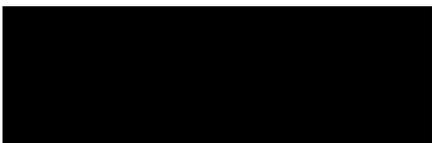
FILE: 

Office: EL PASO, TX Date: NOV 29 2007

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be rejected.

The record reflects that the applicant was born in Mexico on March 24, 1960. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were married in 1944. The applicant seeks a certificate of citizenship under section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director concluded that the applicant had failed to establish that his father was born in the United States. The district director noted that the applicant had previously filed an identical application, and that the application had been denied upon finding that the evidence relating to the applicant's father's place of birth was not credible. The district director further noted that the applicant did not submit any evidence to overcome the concerns raised regarding his father's place of birth.

On appeal, the applicant maintains that his father's birth certificate issued by the State of Texas controls as a matter of states' rights. See Applicant's Appellate Brief.

"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 1960. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.

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.

Pursuant to the regulations, at 8 C.F.R. § 341.6, "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration"

The AAO notes that the applicant's first application for a certificate of citizenship was denied, and that an appeal of the denial was dismissed by this office on January 29, 2003. The instant application must therefore be rejected pursuant to 8 C.F.R. § 341.6.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO notes that the applicant has not provided any additional evidence or argument that would warrant reopening or reconsideration of the January 29, 2003 decision in this case.

As noted in the January 29, 2003 AAO decision, there is a sworn statement by the applicant's father stating that he was born in Mexico. There is also a baptismal certificate issued in Mexico, and indicating that the applicant's father was born in Mexico. The AAO notes that the record also contains a delayed birth certificate issued in Texas, indicating that the applicant's father was born in Texas. The AAO noted in its January 29, 2003 decision that the delayed birth certificate was determined to be fraudulent. The applicant has not provided any evidence or argument that would persuade the AAO that his father was born in the United States. The applicant's father's place of birth is, at best, unclear.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the 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).

The applicant has not established that his father was born in the United States. As noted above, the applicant's burden is to establish his father's place of birth by a preponderance of the evidence, and any doubts must be resolved against the applicant. The applicant in the present case has not met his burden. Additionally, as noted above, the application must be rejected pursuant to the regulations. Therefore, the appeal will be dismissed. The application will be rejected.

ORDER: The appeal is dismissed. The application is rejected.