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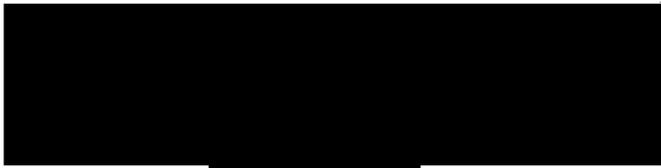
U.S. Department of Homeland Security
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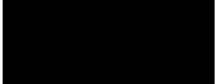
U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date: OCT 01 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas and the matter 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 [REDACTED]. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's mother acquired U.S. citizenship at birth, on [REDACTED]. The applicant's parents were married in 1969 in Mexico. The applicant seeks a certificate of citizenship under 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 U.S. citizen mother.

The district director concluded the applicant had failed to establish that his mother had the required physical presence in the United States. The district director based his conclusion on the testimony of the applicant's mother, who stated that she had resided in the United States only 6 years prior to the applicant's birth, from [REDACTED] and from 1984 to the present. The district director thus found the applicant ineligible for citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), and denied the application accordingly.

On appeal, the applicant submits a notarized statement executed by his mother wherein she indicates that she was also present in the United States from 1964 to 1969. She claims that she didn't testify regarding this presence because she was unable to find anyone to corroborate her claim. The applicant's mother attaches to her declaration an affidavit executed by her aunt stating that she resided in the United States from 1964 until January 1969.

"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 1972. Section 301(a)(7) of the former Act therefore applies to the present 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 mother was physically present in the United States for at least ten years prior to [REDACTED] (the applicant's date of birth), at least five of which were after [REDACTED] (applicant's mother's 14th birthday).

The applicant's mother was 16 when the applicant was born. The applicant therefore cannot establish that his mother resided in the United States for five years after attaining the age of 14 (in 1970), but prior to his birth in 1972.

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). 8 C.F.R. § 341.2(c) provides that 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 in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.