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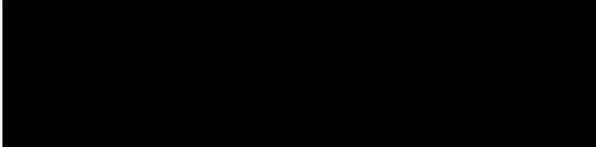
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: HARLINGEN, TX

Date:

OCT 02 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:



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, were [REDACTED]. The applicant's parents were married on [REDACTED]. The applicant's father is a native-born U.S. citizen, born on [REDACTED] in Thrall, Texas. 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 father.

The district director concluded the applicant had failed to establish that his father had the required physical presence in the United States. 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, through counsel, submits a brief contending that the district director erred in denying the application. The applicant maintains that his application should be granted because his brother derived U.S. citizenship from the applicant's father. The applicant submits evidence of the attempts made by him and his counsel to obtain evidence in support of his claim.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in the present matter was born in 1960. 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 father was physically present in the United States for at least ten years prior to November 24, 1960 (the applicant's date of birth), at least five of which were after December 4, 1933 (applicant's father's 14<sup>th</sup> birthday).

The record contains the following evidence relating to the applicant's father's physical presence in the United States:

1. The applicant's father's delayed birth certificate and baptismal certificate.

2. Affidavits executed by the applicant's uncles, both named [REDACTED] and the applicant's brother, [REDACTED] stating that the applicant's father lived in the United States all his life.
3. A response from the U.S. Census Bureau indicating that no record could be found of the applicant's father.
4. A response from the Social Security Administration indicating that no record could be found of the applicant's father.
5. Affidavits executed by counsel describing information provided to her by the applicant's brother.
6. Affidavits from counsel's staff describing their unsuccessful efforts to locate information and evidence of the applicant's father's physical presence in the United States.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

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 affidavits and evidence submitted by the applicant are not detailed or consistent. There is no evidence in the record to support the applicant's claim, or to suggest that his claim is probably true or more likely than not. The applicant in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.