

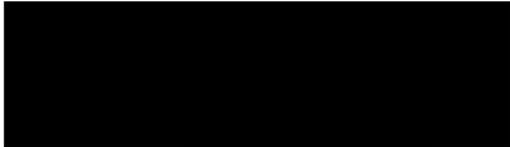
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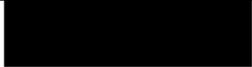
U.S. Citizenship
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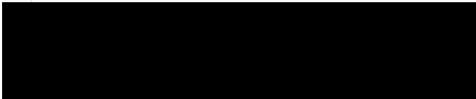
Office: HARLINGEN, TX

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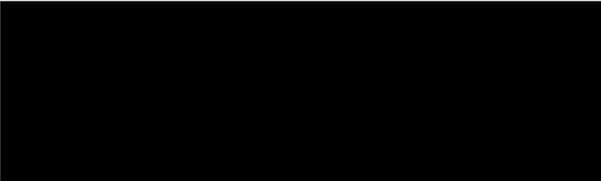
Applicant:



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 July 4, 1954. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on September 6, 1946. The applicant's mother is a native-born U.S. citizen, born on July 26, 1925 in Casas, Texas. There is no information in the record regarding the applicant's father's citizenship. 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 denied the applicant's request for an extension of time in which to submit additional supporting documentation. The district director denied the application, finding the applicant ineligible for citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7).

On appeal, the applicant, through counsel, submits a brief contending that the district director erred in denying his request for an extension of time and maintaining that he established, by a preponderance of the evidence, that his mother had the required U.S. physical presence.

"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 1954. 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 record contains the applicant's birth certificate, and his mother's birth and baptismal certificate. The applicant did not provide any additional evidence of his mother's physical presence on appeal. Instead, the applicant, through counsel, submits a brief contending that the district director's decision to deny his request

for an extension of time was an abuse of discretion. The applicant fails to explain what evidence he would have submitted had his request been granted, or why the evidence could not be timely submitted.

The AAO reviews the matter *de novo*. As noted above, other than the applicant's mother's birth and baptismal certificates, the record is devoid of any evidence relating to her physical presence in the United States. The applicant therefore has failed to establish that his mother was physically present in the United States for the required 10 years, five of which were after the age of 14.

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.