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U.S. Citizenship  
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SEP 28 2007

FILE: [REDACTED] OFFICE: HARLINGEN, TEXAS Date:

IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on December 2, 1950. The applicant's father, [REDACTED] was born in Texas on February 10, 1917, and he is a U.S. citizen. The record does not reflect, and the applicant does not assert, that his mother was a U.S. citizen. The applicant indicated that his parents were married at the time of his birth. The applicant seeks a certificate of citizenship based on the claim that he derived U.S. citizenship at birth through his father.

The district director found that the applicant failed to establish that his father was present in the United States for a period of ten years prior to the applicant's birth, at least five of which were after the applicant's father reached sixteen years of age, as required by Section 201(g) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137. The application was denied accordingly.

On appeal, the applicant asserts that previously submitted evidence, as well as documents he provides on appeal, support that he is eligible for a certificate of citizenship. *Statement from Applicant on Form I-290B*, dated May 6, 2005.

The record contains, in pertinent part: statements from the applicant's father's two cousins and former co-worker; a copy of the applicant's grandfather's naturalization certificate; a copy of the applicant's father's baptismal certificate; copies of photographs; a copy of the applicant's father's birth certificate, and; a copy of the applicant's birth certificate. The entire record was reviewed in rendering this decision.

"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 was born on December 2, 1950. Section 201(g) of the Nationality of 1940, Pub. L. 76-853, 54 Stat. 1137, is therefore applicable to his derivative citizenship claim.

Section 201(g) of the Nationality Act of 1940 states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

Upon review of the evidence of record, the applicant has provided sufficient evidence and testimony to show by a preponderance of the evidence that his father was present in the United States for ten years prior to the applicant's birth, at least five of which were after the applicant's father reached sixteen years of age. Section 201(g) of the Nationality Act of 1940.

The applicant provided a copy of his father's birth certificate that reflects that his father was born in Texas on February 10, 1917. The applicant submitted a copy of his father's baptismal certificate that shows that his father was baptized in Texas on May 29, 1917. It is reasonable to assume that the applicant's father was present in the United States between the date of his birth and the date of his baptism. This period totals almost four months of presence in the United States.

The applicant submitted a statement from his father's cousin, [REDACTED] in which [REDACTED] stated that he met the applicant's father in the 1920s. *Statement from [REDACTED]*, dated February 25, 2005. [REDACTED] provided that, when he became working age in 1937, he and the applicant's father resided in the same city and county, and they sometimes worked for the same employer. *Id.* While [REDACTED] did not state the city or county in which he and the applicant's father resided, and he implied that they were in the United States. [REDACTED] stated that his father and the applicant's grandfather worked together in Corpus Christi, Texas, but this fact does not account for the applicant's father's location. *Statement from [REDACTED]* at 1. Thus, [REDACTED] statement suggests that the applicant's father resided in the United States in 1937 and for an indefinite period afterward.

The applicant submitted a statement from another of his father's cousins, [REDACTED] in which [REDACTED] indicated that the applicant's father resided with him and other family members. *Statement from [REDACTED]*, undated. He stated that they moved to Three Rivers, Texas in 1932. *Id.* [REDACTED] stated that the applicant's father worked in a glass factory in Three Rivers until 1938. *Id.* [REDACTED] provided that the applicant's father then moved to McAllen, Texas, where [REDACTED] also resided for "2 to 3 years." *Id.* [REDACTED] indicated that he and his family relocated to Mexico, and the applicant's father remained in McAllen, Texas. *Id.* However, [REDACTED] did not state how long the applicant's father remained in McAllen, Texas. Thus, [REDACTED] statement references a period of the applicant's father's residence in the United States from 1932 to 1938, and for a period of two to three years beginning in 1939. This period of residence totals approximately eight or nine years.

The applicant submitted a statement from his father's friend and co-worker, [REDACTED] in which [REDACTED] stated that he knew the applicant's father in 1940, and they worked together in a cotton gin from 1940 to 1942. *Statement from [REDACTED]*, dated February 2, 2005. While [REDACTED] did not provide the location of the cotton gin, the statement from [REDACTED] suggests that it was in Texas. [REDACTED] stated that he and the applicant's father began working for a tortilla factory in Elsa, Texas until 1957. *Statement from [REDACTED]* at 1. However, [REDACTED] did not provide the date that he and the applicant's father began working for the tortilla factory, such that the AAO can make a definite determination of the length of time the applicant's father was working there in the United States. As the applicant was born in 1950, the fact that his father worked in the United States in 1957 does not reflect that his father accrued presence in the United States prior to the applicant's birth. Thus, [REDACTED] statement suggests that the applicant father was present in the United States from 1940 to 1942, yet it does not serve as evidence that the applicant's father resided in the United States for an additional identifiable length of time prior to the applicant's birth.

The applicant's birth certificate shows that the applicant was born in Mexico on December 2, 1950. The applicant has not stated whether his father was in the United States at the time of the applicant's birth. In the absence of such explanation, the AAO cannot determine whether the applicant's father was present in Mexico with his wife at the time of the applicant's birth, or whether he was in the United States.

The applicant submitted copies of photographs ostensibly of his father and his father's family. However, the photographs are undated, they do not clearly indicate who is depicted in them, they do not state where they were taken, and the brief accompanying notations are in a foreign language without translation into English. Thus, the photographs do not serve as evidence of the applicant's father's location prior to the applicant's

birth.

In summary, the applicant has submitted evidence that reflects that his father was present in the United States for almost four months beginning from the time of his father's birth, for approximately eight or nine years beginning in 1932, and from approximately 1940 to 1942. These three periods, in aggregate, total approximately ten years and four months. Based on the foregoing, the AAO finds that the totality of the evidence and statements in the record show by a preponderance of the evidence that the applicant's father was present in the United States for at least 10 years prior to the applicant's birth, at least five of which were after the applicant's father reached sixteen years of age, as required by Section 201(g) of the Nationality Act of 1940. Therefore, the applicant has established that he is eligible for a certificate of citizenship under section 201(g) of the Nationality Act of 1940.

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. The applicant has met his burden in the present matter. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.