

Identifying info deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E₂



FILE:

Office: OMAHA, NE Date:

DEC 15 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7), as amended.

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Omaha, Nebraska and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 24, 1962 in Mexico. The applicant's father, [REDACTED], was born on January 28, 1931 in Michigan. The applicant's mother, [REDACTED], was, at the time of his birth, a citizen of Mexico. She became a naturalized U.S. citizen on June 18, 1998. The applicant's parents married on April 30, 1962. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father.

"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 this case was born on July 24, 1962. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the Immigration and Nationality Act (the Act), as amended, the applicable immigration statute in effect in 1962.

Section 301(a)(7) of the Act states, in pertinent part, 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The field office director found the evidence of record insufficient to establish that, prior to the applicant's birth, his U.S. citizen father had been physically present in the United States for periods totaling at least ten years. Accordingly, she denied the Form N-600, Application for Certificate of Citizenship. *Decision of the Field Office Director*, dated November 6, 2008.

On appeal, counsel contends that the field office director's decision contains factual errors and fails to objectively consider the evidence presented by the applicant. Counsel further asserts that the field office director failed to apply the proper legal standard in reaching her decision and reached an erroneous conclusion that has resulted in the detention of a U.S. citizen. *Counsel's brief*, dated December 2, 2008.

The record offers limited documentary evidence in support of the applicant's claim that [REDACTED] was physically present in the United States for at least ten years prior to his birth: [REDACTED]'s birth certificate; a social security statement showing [REDACTED]'s U.S. earnings beginning in 1956; a December 22, 1997 letter from the Superintendent of Public Instruction, Gering, Nebraska regarding [REDACTED] school record and an accompanying certificate documenting [REDACTED] school attendance in 1945; a Nebraska driver's license issued to [REDACTED] in 1965; and a Selective Service Classification card for [REDACTED], dated December 14, 1955. Supplementing

this documentation are three affidavits sworn by [REDACTED] and a fourth affidavit from [REDACTED] [REDACTED]'s older sister.

While the AAO notes the limited nature of the documentary evidence provided by the applicant, it also acknowledges the difficulty of obtaining records for a migrant worker born more than 70 years ago and will accept as evidence the affidavits from [REDACTED] and his sister, persons with direct personal knowledge of [REDACTED]'s life prior to the applicant's birth. *See* 8 C.F.R. § 103.2(b)(2). The AAO now turns to a consideration of these affidavits.

In his October 9 and October 24, 2008 affidavits, [REDACTED] states that approximately 18 months after he was born, his family moved to Mexico, not returning to the United States until 1944. Upon their return to the United States, [REDACTED] reports that the family settled in Harlingen, Texas, where he was enrolled in school, specifically the Alamo School. A year later, he states, the family moved temporarily to Scottsbluff, Nebraska, thereafter traveling between Texas and Nebraska. Mr. [REDACTED] recalls working in Texas, Nebraska, Illinois, Delaware, California, Arizona and Connecticut during the years after the family's return to the United States and that, in his younger years, he also attended school in Nebraska. [REDACTED]'s recollection is that from his return to the United States in the early 1940s, he remained almost entirely in the United States until he was out of his teens.

From the early 1950s until the early 1970s, [REDACTED] reports that he traveled throughout the United States, much of the time with his sister [REDACTED] and her husband. Both siblings stayed with their sister, [REDACTED], when they had work in Nebraska. Although beginning in the 1950s, Mr. [REDACTED] began making regular trips to Mexico, he asserts that between his 1931 birth and 1962, he spent at least 15 years in the United States living, working and attending school.

In her affidavit [REDACTED] recounts that she was seven years old when the family moved to Mexico in late 1932 and that the family stayed in Mexico no later than 1944 because World War II was still going on and rationing remained in effect when the family moved to Harlingen. She states that a little more than a year later, the family began migrating between Texas and Nebraska. Ms. [REDACTED] attests that from 1945 until 1950, her entire family lived, moved and worked together in the United States. She estimates that from the date of his birth until 1950, [REDACTED] spent at least seven and one-half years in the United States.

[REDACTED] also asserts that during the period 1951 to 1971, [REDACTED] traveled with her, her husband and son, working as a seasonal crop picker throughout the United States. When they returned to Harlingen, [REDACTED] would stay with her. When they worked in Nebraska, Ms. [REDACTED] and her family, and [REDACTED] would stay with their sister, [REDACTED].

In a February 24, 1997 affidavit, [REDACTED] states that he attended the East Gering Valley School District No. 17 in Nebraska in 1945 and 1946. [REDACTED] notes that the certificate in the record documenting his school attendance in Nebraska contains incorrect information regarding his given name, date of birth and his father's name. [REDACTED] states that his birth name is [REDACTED] that his date of birth is January 28, 1931 and his father's full name was [REDACTED].

also states that [REDACTED] was registered for school in two school districts in Texas, the Alamo school in Harlingen, Texas and another school in Edcough, and that he also attended school in Scottsbluff, Nebraska. Although [REDACTED] indicates that she registered her brother for some of the schools he attended, she also states that he registered for others on his own. [REDACTED] states that she can confirm that the school record identified by the Superintendent of Public Instruction in Gering, Nebraska is that of her brother. She states that she believes she was the family member who registered him and that she was unable to read basic English or communicate dates at that time.

The AAO notes that the burden in this proceeding is on the applicant to prove, by a preponderance of evidence, that [REDACTED] was physically present in the United States for a total of at least ten years prior to his birth. While the record of evidence is limited in the present case, the AAO does not find the dearth of documentation to require the dismissal of the appeal. The documentation submitted to establish [REDACTED] presence in the United States has been acceptably supplemented by the affidavits of [REDACTED] and [REDACTED] who provide consistent accounts of [REDACTED]s presence in the United States during the 1940s and 1950s. Moreover, their testimony is consistent with the information provided by the documentary evidence found in the record.

In reaching this conclusion, the AAO has noted the discrepancies identified by the field office director in [REDACTED]s school attendance certificate for 1945. It finds, however, that Ms. [REDACTED] explanation of the possible origin of the inconsistencies, in conjunction with the information provided in the December 22, 1997 letter from the Superintendent of Public Instruction in Gering, Nebraska, to establish the reliability of the certificate for the purposes of establishing that [REDACTED] attended school in Nebraska during 1945.

The field office director also found that [REDACTED] testimony during a November 5, 2008 interview was inconsistent with that provided in his affidavits. She further concluded that the issuance of certificates of citizenship to the applicant's younger brothers was based on the additional documentation found in their records. However, the oral testimony provided by [REDACTED] on November 5, 2008 and documented in the record by the interviewing officer's notes does not appear to conflict with that he provided in writing. Moreover, having reviewed the files of two of the siblings who have been awarded certificates of citizenship, the AAO finds the documentation provided in support of their claims to be virtually identical to that in the applicant's file, excepting a brief January 23, 2001 affidavit from [REDACTED] and copies of a photograph and a small pox vaccination card dated May 9, 1962. The AAO observes that the applicant's siblings submitted the same documentation to establish [REDACTED]s school attendance in 1945 and the same report of his social security earnings. Although the field office director indicated that additional social security earnings for [REDACTED] and a second 1966 selective service classification card supported, in part, the claims to citizenship made by the applicant's siblings, the AAO finds neither of the records it has reviewed to contain such evidence.

Therefore, having considered the record, the AAO finds that, in the aggregate, the testimony of Mr. [REDACTED] and [REDACTED], [REDACTED] school attendance certificate for 1945, [REDACTED]s social security earnings statement showing income for the years 1956 – 1959 and 1962; [REDACTED],

selective service classification card issued in 1955; and 1965 Nebraska driver's license, which indicates that he previously held a Nebraska license, to meet the preponderance of evidence standard necessary to establish that he was physically present in the United States for at least ten years prior to the applicant's birth and that five of those years followed his 14th birthday on January 28, 1945. Accordingly, the appeal will be sustained.

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). As previously noted, the regulation at 8 C.F.R. § 341.2 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." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has met his burden in this proceeding.

ORDER: The appeal is sustained.