

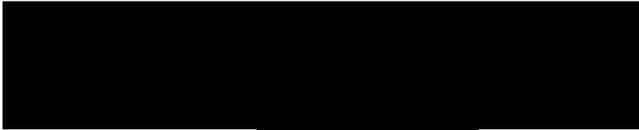
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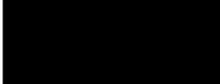
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 01 2008

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the
Immigration and Nationality Act of 1952, 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 26, 1963 in Mexico. The applicant's father, [REDACTED] was born on February 26, 1941 in San Diego, California. The applicant's mother, [REDACTED], was, at the time of his birth, a citizen of Mexico and, based on the Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents were married on June 10, 1960 in Imperial Beach, California. 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 in Mexico on November 16, 1963. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1963.

Section 301(a)(7) of the 1952 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 record must, therefore, establish that [REDACTED] was a U.S. citizen at the time of the applicant's birth and that [REDACTED] met the physical presence requirements set forth above prior to the applicant's birth.

The record contains a copy of [REDACTED]'s U.S. birth certificate and, thereby, demonstrates that he was a U.S. citizen at the time the applicant was born. The AAO notes that the director expressed concern that Mr. [REDACTED] first name appeared as [REDACTED] on his U.S. birth certificate, but as [REDACTED] on the applicant's Mexican birth certificate. The director also noted discrepancies between the names of [REDACTED]'s parents and his date of birth as listed on his birth certificate and the names of his parents and date of birth in his school records, as discussed in a letter from the National School District in National City, California documenting his school attendance in the United States. Based on its review of these documents, the AAO does not find the noted discrepancies to establish a basis for questioning the validity of [REDACTED]'s birth certificate or his school records. Therefore, the only remaining issue before the AAO is whether [REDACTED] was physically present in the United States for a total of at least ten years prior to the applicant's birth, five of which followed his 14th birthday.

The record contains the following evidence related to [REDACTED]'s presence in the United States:

- A letter from the National School District, National City, California, which indicates that [REDACTED] was enrolled in the Walker School on September 10, 1946; attended the Central School for the school years, 1947-48 through 1952-53; and entered Lincoln Acres School for the 1953-54 school year. The letter reports that Mr.

██████████ was promoted to junior high school on June 18, 1954, but does not indicate that he attended junior high school.

- A copy of ██████████'s birth certificate establishing that he was born in San Diego, California on February 26, 1941.
- A copy of ██████████'s death certificate, issued May 1, 1990, which reports that at the time of his death, ██████████ had been residing in the United States for 49 years.
- A copy of a page from the Form I-485, Application for Permission to Register Permanent Resident or Adjust Status, filed by the applicant's mother, which indicates that she had last entered the United States in 1971.
- A copy of the 1974 birth certificate for ██████████'s youngest child, Daniel, establishing his place of birth as National City, California.
- A copy of a Form G-325A for the applicant's mother, listing the U.S. addresses where she has lived since 1971.
- A copy of ██████████'s 1960 marriage certificate listing his address as ██████████ National City, California.
- A copy of a May 20, 1988 letter from the JB Construction Company in Spring Valley, California indicating that ██████████ had been in their employ for more than a year.
- An affidavit sworn by ██████████ on May 23, 1988 regarding his financial support of the applicant's mother and stating his place of residence as San Diego, California.
- Copies of ██████████'s Social Security card; his California driver's licenses, issued in 1968, 1982 and 1986; and a newspaper notice of his death.

Of the documentation listed above, only the letter from the National School District, and ██████████'s birth, marriage and death certificates provide evidence related to his presence in the United States prior to the applicant's 1971 birth. The AAO finds the letter from the National School District to demonstrate that Mr. ██████████ was present in the United States during the period 1946 through 1954, i.e., from the age of five years until the age of 14 years. The record does not, however, contain evidence that would establish his presence in the United States for a period of five years after he turned 14 years of age and prior to the birth of the applicant, as required by section 301(a)(7) of the Act. The AAO acknowledges that ██████████'s marriage certificate and death certificate demonstrate that he was physically in the United States for some period of time following his 14th birthday. The marriage certificate offers proof that, at time of his marriage, Mr. ██████████ was living in California, but does not indicate the length of this residence. ██████████'s death certificate reports that he lived in the United States for 49 years, his entire life. However, in the absence of any type of corroborating evidence, e.g., employment, school, tax, property or church records, the AAO finds ██████████'s death certificate to be insufficient proof of his presence in the United States for five years following his 14th birthday and prior to the applicant's birth.

For the reasons discussed above, the record does not establish that prior to the applicant's birth, his father was physically present in the United States for a total of ten years, five of which followed his 14th birthday.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding and the appeal will be dismissed.

ORDER: The appeal is dismissed.