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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: EL PASO, TEXAS Date: DEC 23 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 201(g) of the Nationality Act of 1940; 54 Stat. 1138.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on April 23, 1951, in Ojinaga, Chihuahua, Mexico. The record indicates that the applicant's father, was born in Presidio, Texas on August 20, 1919, and that he was a United States (U.S.) citizen. The applicant's father died in Odessa, Texas, on September 6, 2000. The applicant's mother, was born in Ojinaga, Chihuahua, Mexico on September 27, 1927, and was not a U.S. citizen. The applicant's mother died in Ojinaga, Mexico, on October 22, 1987. The applicant's parents married on June 24, 1944, in Ojinaga, Chihuahua, Mexico. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the NA); 54 Stat. 1138, based on the claim that he acquired U.S. citizenship at birth through his father.

The interim district director determined that the evidence in the record failed to establish that the applicant's U.S. citizen father had resided in the United States or its outlying possessions for a period of 10 years prior to the applicant's birth, at least 5 years of which were after his father reached the age of 16. The application was denied accordingly.

On appeal, the applicant indicates that the interim district director was predisposed to denying his U.S. citizenship claim, and that discretion was abused in his case. The applicant asserts that he submitted sufficient evidence to prove that his U.S. citizen father met the residency requirements set forth in section 201(g) of the NA. As further evidence, the applicant asserts that one of his brothers (Rene Rodriguez-Aguirre, A77-754-206) was determined to be a U.S. citizen based on identical evidence.

"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).

In order for a child born outside of the United States to derive citizenship from one U.S. citizen parent pursuant to section 201(g) of the NA, it must be established that, when the child was born, the U.S. citizen parent resided in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 16. *See § 201(g) of the NA.* In addition, the child must establish that she or he had continuous physical presence in the United States or its outlying possessions for 5 years between the ages of 13 and

21. *See id.*

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted).

> [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." *Tijerina-Villareal* at 331 (citations omitted.)

The AAO finds that in the present case, the applicant failed to establish that at the time of the applicant's birth, his father had resided in the United States for 10 years (between August 20, 1919 and April 23, 1951), at least 5 years of which were after August 20, 1935.

The record reflects that the applicant submitted copies of the following documents in support of his claim:

A birth certificate stating that the applicant's father was born in Presidio, Texas on **August 20, 1919;**

A baptismal certificate stating that the applicant's father was baptized in Presidio, Texas on **October 20, 1919;**

A **1920** U.S. Census Report for Presidio County, Texas, containing the name of the applicant's father and his family;

A letter from the Civilian Conservation Corps, stating that the applicant's father was enrolled in the program in Fabens, Texas between **April 9, 1937 and September 30, 1937;**

A letter from the U.S. Selective Service System, stating that the applicant's father registered with the Selective Service office in Marfa, Texas, on **October 16, 1940;**

A Social Security Administration record reflecting the following earnings by the applicant's father, prior to the applicant's birth in November 1952:

1939:	$ 72.80
1940 - 1960:	$ 0.00

Two affidavits, dated September 25, 2000, from friends who claimed that the applicant's father was born in Presidio, Texas and that he lived in Presidio, Texas for all of his life.

The AAO finds that the birth certificate and baptism evidence submitted by the applicant establish that the applicant's father was born in the United States and that he was a U.S. citizen who resided in the U.S. in 1919. The AAO finds further that the Census record information establishes that the applicant's father also resided with his family in the U.S. in 1920. Moreover, the AAO finds that the evidence submitted establishes that the applicant's father was enrolled in the Civilian Conservation Corp between April and September of 1937, and that he resided in the U.S. during that time.[1] However, the AAO finds that the Selective Service letter fails to establish where the applicant resided prior to, at the time of, or subsequent to his registration with the Selective Service, and that the remaining evidence in the record fails to establish that the applicant's father resided in the U.S. at any other time prior to the applicant's birth.

The affidavits by and state that each affiant was born in Presidio, Texas, and that each lived their entire life there. The affiants each state that they had personal contact with the applicant's father based on his transactions at their stores. The affiants state further that the applicant's father lived in Presidio, Texas, all of his life and that he resided in a small house known as the Apartments.

The AAO finds that the above affidavits provide insufficient details to establish that the applicant's father satisfied the residence requirements set forth in section 201(g) of the NA. The affidavits lack detail regarding specific dates or addresses where the applicant's father resided. Moreover, there are no specific details regarding the dates, or regarding the frequency and level of contact between the affiants and the applicant's father. Moreover, the

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[1] The AAO notes that information found at: http://newdeal.feri.org/ccc/ccc008.htm, "Selection of Enrollees for the Civilian Conservation Corps (Utah)" clarifies that the Civilian Conservation Corps (CCC) was a nationwide federally operated emergency employment program created to alleviate unemployment for males between the ages of 18 and 25. Enrollment periods lasted for 6 months, with an option of extending enrollment for an additional 6 months. The enrollees lived in camps for the 6-month period, and enrollment could not exceed 2 years.

In the present case, the letter submitted by the applicant indicates that the applicant's father was enrolled in the CCC program in Fabens, Texas, for the enrollment period between April 9, 1937 and September 30, 1937.

affidavits are unsupported by any corroborative evidence. Because they lack detail and corroborative evidence, the affidavits submitted fail to establish that the applicant's father resided in the U.S. for 10 years, at least 5 of which were after the age of 16 years old.

No other evidence is contained in the record to support the claim that the applicant's father resided in the U.S. for the requisite number of years, as set forth in section 201(g) of the NA. To the contrary, the remaining evidence in the record contradicts the assertion that the applicant's father resided in the U.S. for the requisite time period.

The Social Security Administration information submitted by the applicant indicates that the applicant's father earned only about $73.00 in the United States in 1939, and that he had no further earnings in the U.S. from 1940 through 1961. In addition, the evidence indicates that the applicant's father married his wife in Ojinaga, Mexico on June 24, 1944, and that all of their five children were born and raised in Ojinaga, Mexico. The evidence indicates further that the applicant's father's residence is listed as Ojinaga, Chihuahua, Mexico, on the applicant's birth certificate.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Given the absence of supportive evidence to establish that the applicant's father resided in the United States for the requisite period of time between 1919 and 1951, the applicant has not met the burden of establishing that his father resided in the United States for a total of 10 years, 5 of which were after the age of 16. The AAO notes that it is therefore unnecessary for the AAO to address the issue of whether the applicant, himself, met the U.S. residency requirements set forth in the second part of section 201(g) of the NA. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.