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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PORTLAND, OREGON Date: APR 12 2004

IN RE: Applica[redacted]

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

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

The applicant was born on November 14, 1960, in Matamoros, Mexico. The record reflects that the applicant's father, was born in Brownsville, Texas, on July 18, 1925, and that he is a United States (U.S.) citizen. The applicant's mother, was born in Matamoros, Mexico, and she became a naturalized U.S. citizen on June 19, 1998. The applicant's parents married on April 18, 1962, in Rio Brava, Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director concluded the applicant had failed to establish that his father was physically present in the United States for at least 10 years prior to the applicant's birth, 5 years of which occurred after the applicant's father turned 14. The application was denied accordingly.

Counsel asserts on appeal, that existing and new evidence demonstrates that the applicant qualifies for U.S. citizenship pursuant to section 301 of the Act. In support of his assertion, counsel submits copies of documents submitted during March 2001, immigration court removal proceedings against the applicant. Counsel additionally submits copies of the removal hearing transcript and the final order of the Immigration Judge, finding the applicant to be a derivative U.S. citizen.

"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 was born in Mexico in 1960. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.[1]

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) 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.

In the present case, the applicant must establish that his father was physically present in the U.S. for 10 years between July 18, 1925, and November 14, 1960, and that 5 of those years occurred after July 18, 1939, when his father turned 14. The record contains the following evidence pertaining to the applicant's father's (Mr. hysical presence in the United States during the requisite time period:

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[1] It is noted that the district director's decision assessed the applicant's father's physical presence requirement pursuant to section 301(g) of the Act. Section 301(g) replaced former section 301(a)(7) when the Immigration and Nationality Act was amended in 1986. The physical presence requirements for sections 301(a)(7) and 301(g) are identical. The district director's analysis and subsequent conclusions would thus have been the same pursuant to either section.

A Texas State birth certificate reflecting that Mr. was born in Brownsville, Texas, on July 18, 1925;

A Certificate of Baptism reflecting that Mr. was baptized in Texas on November 25, 1925;

Affidavits from Mr. his wife and two family friends detailing that Mr. was in the United States for ten or more years prior to the applicant's birth, at least 5 years of which occurred after Mr. turned 14 years old;

A transcript of the March 13, 2001, immigration court removal proceedings against the applicant, containing physical presence testimony by M and the applicant's mother;

The March 13, 2001, Oral Decision by Immigration Judge, Michael Bennett, finding the physical presence testimony of Mr. and the applicant's mother to be credible, and finding the lack of documentary evidence in the present case to be reasonable, given social conditions during the requisite years. (After assessing the testimony and evidence, the immigration judge terminated proceedings against the applicant, finding that he had established citizenship by more than a preponderance of evidence. The immigration judge's decision was not appealed and thus became a final order.)

The AAO notes that the district director denied the applicant's citizenship application based on the lack of documentary evidence in the record, and the conclusion that witness affidavits from the applicant's parents and two family friends were unreliable and carried little weight absent supporting or corroborative evidence. The AAO finds that the new immigration court transcript and decision evidence provided on appeal, provides sufficient proof of the reliability of the information contained in the affidavits contained in the record. The March 13, 2001, immigration court hearing transcript reflects that the applicant's mother and Mr. testified in detail about Mr. physical presence in the United States and about the reasons for his lack of supporting documentation regarding that time period. The March 13, 2001, oral decision by the immigration judge analyzed the credibility of each witness, and analyzed whether the explanations for Mr. ack of additional documentary evidence were reasonable given social conditions in the U.S. between 1925 and 1960. The AAO finds that the evidence contained in the immigration proceedings transcript and in the oral decision of the immigration judge, combined with the affidavit and other evidence contained in the record, sufficiently establishes that the applicant's father meets the physical presence requirements set forth in section 301(a)(7) of the former Act.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has met his burden, and the appeal will be sustained.

ORDER: The appeal is sustained.