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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

[redacted]

FILE: [redacted] Office: EL PASO, TEXAS Date: APR 22 2004

IN RE: Applican[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 Interim District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on February 1, 1961, in Cuchillo, Parado, Chihuahua, Mexico. The record reflects that the applicant's father, was born in Lubbock, Texas, on October 22, 1918, and that he was a United States (U.S.) citizen. The applicant's mother, was born in Mexico and was not a U.S. citizen. The applicant's parents married on September 8, 1947, in Chihuahua, 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 demonstrate that the applicant qualifies for U.S. citizenship pursuant to section 301 of the Act. In support of his assertion, counsel submits copies of two immigration judge Orders finding that the applicant's father met physical presence requirements under section 301(g) of the Act, 8 U.S.C. § 1401(g), and that the applicant's brother and sister qualified for derivative U.S. citizenship pursuant to section 301(g) of the Act. The Immigration Judge additionally noted that another brother obtained a certificate of citizenship pursuant to section 301(g) on February 21, 1991. Counsel also submits copies of Certificates of Citizenship issued on March 7, 2002, to the applicant's sister, Ninja Mata-Bejarano and her two children.

"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 1961. 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.

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 October 22, 1918, and February 1, 1961, and that 5 of those years occurred after October 22, 1932, when his father turned 14. The record contains the following evidence pertaining to the applicant's father's (Mr. physical presence in the United States during the requisite time period:

> A September 18, 1974, Court Ordered Delayed Certificate of Birth from the State of Texas, reflecting that Mr. Mata was born in Lubbock, Texas, on October 22, 1918;

A U.S. Passport issued on December 13, 1985, reflecting that Mr. was born in Texas on October 22, 1918;

A 1930 U.S. Census Bureau record reflecting that Mr. was present in Texas during the year 1930;

Affidavits from Mr. and four former co-workers stating that Mr. lived and worked in Texas between 1935 and 1945;

A June 6, 1999, immigration court order, signed by Immigration Judge, terminating removal proceedings against the applicant's brother born 9/4/62). The Order specifically finds that the applicant's father resided in the U.S. from 1918 to 1931 and from 1935 to 1945. The Order additionally notes that the applicant's other brother /15/48) was issued a Certificate of Citizenship by the Immigration and Naturalization Service (Immigration Service) on February 21, 1991, based on his father's birth and residence in the United States under section 301 of the Act;

A January 8, 2001, immigration court order, signed by Immigration Judge, terminating removal proceedings against the applicant's sister born 4/30/55). The Order found that the applicant's father, was a U.S. citizen who resided in the U.S. from 1918 to 1931 and from 1935 to 1945, and that the applicant's sister was entitled to U.S. citizenship under section 301(g) of the Act. (The AAO notes that neither the June 6, 1999 immigration judge order nor the January 8, 2001, order were appealed by the Immigration Service).

Copies of Certificates of Citizenship issued on March 7, 2002, to the applicant's sister nd her children, born 3/1/87) an born 11/23/84).

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. In *Matter of E-M-,* 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that the preponderance of the evidence standard requires a lesser showing than the clear, unequivocal, and convincing evidence standard applicable in deportation (removal) proceedings. The Commissioner indicated further that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true.

The AAO finds the immigration court findings that Mr. met physical presence requirements under section 301(g) of the Act, combined with the physical presence evidence contained in the record, establish, by a preponderance of the evidence, that the applicant's father meets the physical presence requirements set forth in section 301(a)(7) of the former Act. Accordingly, the applicant has met his burden of establishing that he qualifies for U.S. citizenship under section 301(a)(7) of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.