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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DALLAS, TEXAS Date: JUN 29 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301 of the former 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.[1]

The record reflects that the applicant was born on September 26, 1961, in Matamoros, Tamaulipas, Mexico. The applicant's father, was born in Texas on May 21, 1937, and he is a United States citizen. The applicant's mother, was born in Mexico, and she became a U.S. citizen in August 1996, when the applicant was thirty-four years old. The applicant's parents were married on May 31, 1961, in Brownsville, Texas. 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 interim district director (IDD) found that the evidence submitted by the applicant failed to establish that the applicant's father was physically present in the United States for 10 years prior to the applicant's birth, at least 5 years of which occurred reached the age of 14. The application was denied accordingly. [2]

On appeal, counsel asserts that the IDD failed to consider all of the evidence in the applicant's case. Counsel asserts that the Social Security Earnings statement and the affidavits submitted in the applicant's case, as well as the presumption that the applicant's father lived in the U.S. with his first wife between 1954 and 1959, establishes by a preponderance of the evidence that was physically present in the United States for the requisite time period under section 301 of the Act. Counsel additionally asserts that a March 2001, federal opinion rendered in favor of the applicant, suggests there is valid evidence to entitle the applicant to U.S. citizenship. [3]

"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,*

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[1] The AAO notes that the applicant filed a previous application for a certificate of citizenship pursuant to section 301 of the Act in 1991. The application was denied by the district director on June 4, 1991, and was not appealed to the AAO. The record reflects that the applicant was placed into deportation proceedings, and was found by an immigration judge to be ineligible for citizenship under section 301 of the Act in February 1994.

[2] The IDD's decision additionally found that the applicant did not qualify for a certificate of citizenship under section 321 of the former Immigration and Nationality Act (former Act) , 8 U.S.C. §1432. The AAO notes that counsel did not contest the finding that the applicant is ineligible for citizenship under section 321 of the former Act. The AAO will therefore only address the applicant's claim to citizenship under section 301 of the Act.

[3] The AAO notes that the federal court decision referred to by counsel pertains to a March 15, 2001, United States District Court, N.D. Texas, Amarillo Division decision which recommends that a motion to vacate the applicant's conviction be dismissed as time-barred. *See U.S. v. Garcia-Mancha,* 2001 WL 2827692001 (U.S.D.C., N.D. Texas, 2001). Although the decision discusses the possibility that the applicant has a claim for ineffective assistance of counsel because his prior attorney did not assert a citizenship defense on the applicant' behalf in previous proceedings, the *Garcia-Mancha* decision does not analyze or make a recommendation or finding on the citizenship issue itself. The decision therefore carries no weight as to the validity or probative value of citizenship evidence presented in the present case.

247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born on September 26, 1961. Section 301(a)(7) of the former Act is therefore applicable to his derivative citizenship claim.

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.

The AAO finds that the birth certificate evidence contained in the record establishes that the applicant's father, was born a U.S. citizen on May 21, 1937. The applicant must therefore establish that was physically present in the U.S. for ten years between May 21, 1937 and September 26, 1961, and that five of those years occurred after May 21, 1951.

The evidence relating to physical presence in the United States between May 21, 1937 and September 26, 1961, consists of copies of the following documents:

A Texas birth certificate indicating that was born in Jim Wells County, Texas on May 21, 1937;

A marriage certificate indicating that married his first wife in Brownsville, Texas on December 27, 1954;

A divorce certificate indicating that divorced his first wife in Texas on April 3, 1959;

A birth certificate indicating that the applicant's sister was born to and the applicant's mother in Colorado on August 27, 1959;

A marriage certificate indicating that married the applicant's mother in Brownsville, Texas on May 13, 1961;

A summary FICA earnings statement indicating that earned the following amounts in the U.S. between 1954 and 1961:
$14.25 in 1954,
$23.44 in 1955,
$0.00 in 1956,
$46.87 in 1957,
$0.00 in 1958,
$70.00 in 1959,
$170.00 in 1960, and
$1434.00 in 1961;

An affidavit dated August 1, 2001, written by indicating that he lived his entire life in the U.S., married his wife in Texas in 1958, and moved permanently to Texas in 1977;

An affidavit dated August 8, 2001, written by stating that she is

lder sister and attesting to the fact that he resided in the U.S. since his birth;

An affidavit dated March 19, 1991, written by stating that he and have been neighbors and friends throughout most of their lives, and that resided in the U.S. from the time of his birth until January 1962;

An affidavit dated May 4, 2001, written by indicating that he me n Texas when he was eight years old, and that he and have worked together and been friends throughout their lives;

An affidavit dated May 9, 2001, written by ating that she has known and been his neighbor in Texas since 1951;

An affidavit dated May 7, 2001, written by stating that he has known since 1950, and that has resided continuously in the U.S. since they met.

The AAO notes that the affidavits submitted by the applicant are unsupported by any corroborative evidence. Moreover, the AAO notes the affidavits lack material information and details regarding specific dates of residence, the addresses where resided, or regarding the frequency and level of contact between the affiants and In addition, the AAO notes the unchallenged discrepancies noted in the IDD's decision, regarding and atements when compared to other testimony and evidence. Because they lack corroborative evidence and material detail, the AAO finds that the affidavits submitted by the applicant 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 14 years old.

The AAO additionally finds that the summary FICA earning statement submitted by the applicant fails to establish that worked or resided in the U.S. for the requisite time period set forth in section 301(a)(7) of the Act. The amount o earnings in 1954, 1955, 1957, 1959 and 1960, does not suggest that worked in th entire year during those periods. Moreover, the FICA earnings statement does not reflect which months worked in the U.S., who he worked for, where he worked, or where he resided during the years that he worked in the U.S. The AAO notes further that even if this information were reflected in the FICA statement, the statement would only reflect tha was present in the U.S. for up to five years prior to the applicant's birth in September 1961.

The AAO additionally finds that the birth, marriage and divorce certificate evidence submitted by the applicant establishes only tha was physically present in the U.S. in December of 1954 and May of 1961, and for two years in 1937 and 1959. The AAO notes that even if it accepted that the above submitted evidence established that had been physically present for the entire years contained in the FICA statement and the documentary certificate evidence, the applicant would still only have established that was physically present in the U.S. for eight years prior to his birth, rather than the ten years required under 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. The applicant in the present case has failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.