PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

12

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: HARLIGEN, TEXAS Date: MAY 24 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1421(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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born on June 4, 1975, in Tamaulipas, Mexico. The record indicates that the applicant's father, was born in Progresso, Texas on May 8, 1952, and that he is a United States citizen. The record indicates that the applicant's mother was born in Mexico and that she is not a U.S. citizen. The applicant's parents were married on February 1, 1985, in Texas. The applicant seeks a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

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

On appeal, the applicant, through his father, states that he is "[n]ot conform with the failed citizenship of my son." The applicant submits several affidavits from persons claiming that the applicant's father resided and worked in the United States. The applicant additionally submits his father's summary FICA earnings statement, as well as his father's Texas marriage certificate, and his father's U.S. birth certificate.

The AAO finds that although the applicant's appeal does not directly identify any factual or legal error in the district director's decision, as required by 8 C.F.R. § 103.3(a)(v), the documentation submitted in support of his appeal demonstrates that the appeal is based on the applicant's belief that the district director erred in finding his father did not meet the U.S. residence requirements set forth in section 301(a)(7) of the former Act. The AAO will therefore review the merits of the present appeal.

"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 in 1975. Thus, the version of section 301 of the Act that was in effect at that time (section 301(a)(7)) controls his claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Act, it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of fourteen. *See* § 301(a)(7) of the former Act. In *Matter of V,* 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that his father (Mr. Gallegos) was physically present in the U.S. for ten years between May 8, 1952 and June 4, 1975, and that five of those years were after May 8, 1966, when his father turned fourteen.

The evidence relating to Mr. Gallegos' physical presence in the United States between May 8, 1952 and June 4, 1975, consists of the following documents:

> A Texas birth certificate indicating that Mr. Gallegos was born in Progresso, Texas on May 8, 1952;

A summary FICA earnings statement indicating that Mr. arned $893.11 in 1970, $369.47 in 1971, $210.50 in 1972, and $44.20 in 1975;

An unnotarized affidavit dated March 21, 1993, written by Manuel Infante, stating that Mr. worked for him in the U.S. for twenty years;

An unnotarized affidavit dated March 19, 1993, written by stating that she has known Mr. since 1966, and that he has lived in the U.S.;

An unnotarized affidavit dated March 19, 1993, written by stating that Mr. was employed by his father in the U.S.;

A notarized affidavit dated September 21, 1994, written by and stating that they have known Mr. since February 1967 and that he worked as a field laborer in the U.S.;

A notarized affidavit dated September 21, 1994, written by stating that he has known Mr. since February 1967, and that Mr. worked as a field hand in the U.S.

The AAO finds that the summary FICA earning statement submitted by the applicant fails to establish that Mr. worked or resided in the U.S. for the requisite time period set forth in section 301(a)(7) of the Act. The FICA statement does not indicate which months Mr. 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. Moreover, even if this information were reflected in the FICA statement, the summary statement reflects that Mr. was present in the U.S. for only four years prior to the applicant's birth in 1975.

Furthermore, the AAO finds that the affidavits submitted by the applicant also fail to establish that the applicant's father satisfied the residence requirements set forth in section 301(a)(7) of the former Act. The AAO notes that the affidavits are unsupported by any corroborative evidence. Moreover, the affidavits lack information and details regarding the specific dates, names or addresses of the places where Mr. worked and resided. Furthermore, there are no specific details regarding the dates, or frequency and level of contact between the affiants and the applicant's father. Because they lack material 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 14 years old.

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 failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.