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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date: MAR 2 2 2006

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to § 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on March 10, 1949. The applicant's mother is not a U.S. citizen. The applicant's father was born in the United States and was a U.S. citizen. The applicant's parents were married to each other. The applicant claims eligibility for a certificate of citizenship based on his father's U.S. citizenship. Pursuant to the applicable section of law, § 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g), the applicant must establish that his father resided for ten years in the United States prior to the applicant's birth, at least five years of which were after his father turned sixteen.

The district director denied the application, because he found that the applicant had failed to establish that his father resided in the U.S. for the time period required by § 201(g) of the Nationality Act. On appeal, the applicant states that his father lived in the United States all his life, and that the applicant recalls staying awake on holidays, waiting for his father to visit his family. The applicant writes that his mother told him his father had to work (away from the family) to support the family. The applicant submits copies of documentation previously included in the record. The AAO has reviewed the entire record and finds that the evidence establishes the applicant's father's residence in the United States during the pertinent period.

"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 1949; therefore, § 201(g) of the Nationality Act applies to his derivative citizenship claim.

Section 201(g) of the Nationality Act states in pertinent part that:

> A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In the present matter, the applicant must establish that his father resided in the U.S. for ten years between his father's birth in 1910 and the applicant's birth in 1949, and that five of those years occurred after his father's sixteenth birthday on June 27, 1926. The record includes the applicant's father's delayed birth certificate, baptismal certificate, two pay stubs for U.S. employment dated in 1946 and 1947, an affidavit by the applicant's mother, two affidavits by the applicant's father's former colleagues, and an affidavit by his former employer.

The applicant's mother stated in her affidavit that she and his father married in 1934, and that the applicant's father worked most of the time in the United States. She noted that he worked on farms in the United States in order to support the family, and that she saw him infrequently. The applicant's father's former employer wrote that he met the applicant's father in Texas in 1938 when the applicant's father was working for the affiant's father, and that in 1945 the applicant's father went to work on the affiant's ranch. The former employer's affidavit claims personal knowledge of the applicant's father's presence in the United States from 1938 until his death in 1994. The applicant's father's two colleagues wrote that they knew him since 1935 and 1938, respectively, and that they knew he was in the United States. The applicant's father's colleagues indicated that they saw him very frequently, as they worked together. The record also contains two pay stubs from 1946 and 1947, corroborating the affiants' statements. The evidence thus substantiates at least eleven (1938 to 1949) and as many as fourteen years (1935 to 1949) of residence prior to the applicant's birth.

The record also contains numerous documents from the applicant's father's residence in the United States after the applicant's birth in 1949, which is irrelevant to this determination. The applicant writes on appeal that his mother collected a box full of his father's papers, but the box was ruined due to rain. In addition, both of the applicant's parents are deceased. Given these circumstances and the fact that the applicant's father worked in agriculture throughout his life, the AAO finds it reasonable that independent documentary evidence of his residence in the United States is nonexistant or unavailable to the applicant. It is noted that the affiants establish the source of their knowledge and include details regarding the frequency and level of contact between the affiants and the applicant's father. The affidavits are sufficiently detailed.

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 AAO finds that the applicant has established by a preponderance of the evidence that his father resided in the United States for at least ten years between 1910 and 1949, five of which were after 1926, as required by § 201(g) of the Nationality Act. The applicant is thus eligible for a certificate of U.S. citizenship, and the appeal will be sustained.

ORDER: The appeal is sustained