U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: JAN 04 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1401(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, Chief
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 dismissed.

The record reflects that the applicant was born on July 29, 1965 in Mexico. The individual identified as the applicant's late father, [redacted] was born on February 12, 1930 in San Benito, Texas. The applicant's mother, [redacted] also deceased, was, based on the applicant's birth certificate, a Mexican citizen. The Form N-600, Application for Certificate of Citizenship, indicates that the applicant's parents were married at the time of his birth. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1401(a)(7). He asserts that he acquired U.S. citizenship at birth through his father

Based on the evidence of record, the district director determined that the applicant had failed to establish that his father, prior to his birth, had been physically present in the United States for at least ten years, five of which followed his father's 14th birthday, as required by section 301(a)(7) of the Act. Accordingly, he denied the application.

On appeal, the applicant submits additional evidence to establish his father's physical presence in the United States prior to his birth.

"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 on July 29, 1965. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1965.

Section 301(a)(7) of the 1952 Act 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 applicant must, therefore, establish that his father, [redacted] was a U.S. citizen at the time of his birth and that, prior to his birth, his father had met the physical presence requirements set forth above.

The applicant has provided a copy of his father's birth certificate that establishes his father was born in San Benito, Texas on February 12, 1930. Therefore, the applicant has demonstrated that his father was a U.S. citizen at the time of his 1965 birth.

The AAO now turns to a consideration of whether the record also proves that the applicant's father was physically present in the United States for the ten year period required by section 301(a)(7) of the 1952 Act. Evidence of Mr. [redacted] presence in the United States includes:

- The 1930 birth certificate previously noted and a baptismal certificate issued on December 9, 2004 by [redacted] in San Benito, Texas indicating that Mr. [redacted] was baptized on September 14, 1930, seven months later.

- A February 22, 2005 affidavit sworn by [redacted] who states that she is Mr. [redacted] cousin and that she was informed by her mother that he was born in the United States and used to work in the United States.

- A November 12, 2005 affidavit sworn by [redacted] who attests that he knew Mr. [redacted] from 1960 until his death in 1995. He states that he and Mr. [redacted] began working at the [redacted] ranch in Hidalgo, Texas in 1963 and that they lived at the ranch during the time they worked there, 1963-1964. After 1964, he reports, that he and Mr. [redacted] saw each other on a monthly basis.

- A November 7, 2005 affidavit sworn by [redacted] stating that he knew Mr. [redacted] between 1950 and 1965. Mr. [redacted] states that he met Mr. [redacted] when they began working together in the fields at [redacted] and that they also worked together at [redacted] in Raymondville, Texas. He indicates that he and Mr. [redacted] used to stay at the ranches where they worked.

The AAO notes the above evidence, but does not find it to establish that the Mr. [redacted] prior to the applicant's birth, was present in the United States for at least ten years, five of which followed Mr. [redacted] 14th birthday. The regulation at 8 C.F.R. § 322.3(b)(1)(vii) lists examples of the type of documentation required to establish the physical presence of U.S. citizen parents or grandparents in the United States, including school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations. In the instant case, the applicant has submitted documentary evidence of his father's birth and baptism in San Benito, Texas, which establishes that Mr. [redacted] was present in the United States for at least seven months following his birth. The applicant has not, however, provided any type of documentation to support the claims made in the submitted affidavits. Without some primary evidence of Mr. [redacted] U.S. residence during the periods indicated, the affidavits are not sufficient proof of his presence in the United States. **Accordingly, the applicant has not demonstrated that, prior to his birth, his father was present in the United States for at least ten years, as required by section 301(a)(7) of the Act.**

Moreover, the three affidavits offer little detail regarding Ms. [redacted] residence in the United States. The affidavit submitted by Ms. [redacted] offers no indication of the time period during which she states that Mr. [redacted] worked in the United States. Neither is the information she provides based on "direct personal knowledge of the event and circumstances," as required by the regulation at 8 C.F.R. § 103.2(b)(2)(i). While the affidavit from Mr. [redacted] states that he and Mr. [redacted] lived in the United States during 1963-1964, that from Mr. [redacted] offers no indication of the time period during which he and Mr. [redacted] worked and lived on several U.S. ranches. Therefore, even if accepted as proof of Mr [redacted] presence in the United States, the affidavits would establish only that the applicant's father lived in the United States during the years 1963-1964. For this reason as well, the affidavits

submitted by the applicant do not establish that his father was physically present in the United States for the requisite time period prior to his birth. The appeal will, therefore, be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding.

ORDER: The appeal is dismissed.