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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]

OFFICE:

ANCHORAGE, AK

Date: JUL 12 2007

IN RE:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Anchorage, Alaska. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant was born in Mexico on August 13, 1966. The record reflects that the applicant's mother was born in California on April 22, 1929, and that she was a U.S. citizen. The applicant's father was born in Mexico and he is not a U.S. citizen. The record indicates that the applicant's parents married in Mexico prior to the applicant's birth. The applicant presently seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his mother pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)).

The district director determined that the applicant had failed to establish by a preponderance of the evidence that he had a U.S. citizen parent, or that his mother was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after his mother reached the age of fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that new *Delayed Registration of Birth* evidence and additional affidavits establish that the applicant's mother was a U.S. citizen and that she met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act.

"[T]he 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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (Citations omitted.) The applicant was born in Mexico in 1966. Section 301(a)(7) of the former Act therefore applies to his acquisition of citizenship claim.

Section 301(a)(7) of the former 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.

In order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant must establish that his mother was a U.S. citizen, that she was physically present in the U.S. for ten years between her birth on April 22, 1929 and the applicant's birth on August 13, 1966, and that five years of U.S. physical presence occurred after April 22, 1943, when the applicant's mother () turned fourteen.

The record contains a State of California, *Court Order Delayed Registration of Birth* issued on October 26, 2005, reflecting that () was born in Imperial, California. The applicant has therefore established that his mother was born in the United States and that she was a U.S. citizen. The record contains the following evidence pertaining to ()'s physical presence in the United States during the relevant time period:

A State of California, *Court Order Delayed Registration of Birth* reflecting that () was born in Imperial, California on April 22, 1929;

A Certificate of Baptism reflecting that [REDACTED] was baptized at the Church of Our lady of Guadalupe in Calexico, California on May 17, 1929;

Two January 22, 2007 affidavits, and a June 16, 2004 affidavit signed by the applicant's cousin, [REDACTED], stating in pertinent part that through conversations with her mother [REDACTED] (sister), the affiant learned that [REDACTED] was born in Imperial, California on April 22, 1929, and that [REDACTED] lived in California until the beginning of 1950 when she returned with her family to Mexico.

A January 29, 2007 affidavit signed by the applicant's sister, [REDACTED] stating in pertinent part that the affiant learned mainly from family members that her mother was born in Imperial, California on April 22, 1929, and that [REDACTED] lived in the United States until the age of twenty-one.

A January 29, 2007 affidavit signed by the applicant's sister, [REDACTED], stating in pertinent part that she learned through family members that her mother was born in Imperial, California on April 22, 1929 and that [REDACTED] lived in Valle Imperial, California until her 20s.

A May 29, 1996 affidavit signed by the applicant's aunt [REDACTED] (sister) [REDACTED], stating in pertinent part that [REDACTED] was born in El Valle Imperial, California on April 22, 1929, and that [REDACTED] was the only child in the family to be baptized at the Church of The Lady of Guadalupe in California. The affiant's date of birth is not contained in the affidavit.

A February 23, 2007 affidavit signed by the applicant's sister, [REDACTED] stating in pertinent part that her mother was born in Imperial, California on April 22, 1929 and that she learned through family members and friends of her mother's that [REDACTED] lived in Valle Imperial (Imperial, Calexico, Browley, Indio), California until the age of 21.

A January 23, 2007 affidavit from the applicant's maternal cousin, [REDACTED] stating in pertinent part that she learned through her mother [REDACTED] (sister) that [REDACTED] was born in Imperial, California on April 22, 1929, and that she lived in different places in the U.S. (El Centro, Calexico, San Diego and Indio, California) until moving to Sonora, Mexico in the 1950s.

A February 26, 2007 affidavit signed by the applicant stating in pertinent part that his mother was born in Imperial, California on April 22, 1929, and that he learned through family members and friends that his mother lived in Valle Imperial (Imperial, Calexico, Browley, Indio), California until the age of 21.

February 18, 2007, and June 23, 2004 affidavits signed by a family friend, [REDACTED], stating in pertinent part that: the affiant was born in Douglas, Arizona on October 10, 1917; that she personally knew [REDACTED] and her family; that their families were close friends; that [REDACTED] moved with her family to Mexico in the beginning of 1950; and that at one point one of her brother's [REDACTED] married [REDACTED] [REDACTED] older sister [REDACTED]

A June 23, 2004 affidavit signed by a family friend, [REDACTED] stating in

pertinent part that: the affiant was born in Douglas, Arizona on February 5, 1911, and that she personally knew the [REDACTED] family beginning in 1920; that she witnessed [REDACTED] birth in Imperial, California on April 22, 1929; and that her brother married [REDACTED] s sister, [REDACTED]

A January 25, 2007 affidavit signed by [REDACTED] brother, [REDACTED] stating that the was born in Calexico, California on July 4, 1927, that his birth was registered in Mexicali, Baja California, Mexico, and that for unknown reasons his other siblings' births were registered in Mexico or were not registered at all. The affiant states that he and his siblings attended school in Imperial Valley, that the family moved often in search of work, and that with the exception of his sister [REDACTED] the family moved to Mexico in the early 1950s.

A February 2, 2007 affidavit signed by [REDACTED] sister, [REDACTED] stating in pertinent part that [REDACTED] was born in Imperial, California on April 22, 1929, and that she and the family resided in El Valle Imperial (Calexico and Imperial, California) until approximately the 1950s, when the family moved to Sonora, Mexico. The affidavit does not contain the affiant's date of birth.

A February 2, 2007 affidavit signed by [REDACTED] sister, [REDACTED] stating in pertinent part that: the affiant is [REDACTED] older sister; that [REDACTED] was born in Imperial, California on April 22, 1929; and that [REDACTED] resided in El Valle Imperial County, California until later moving to Sonora, Mexico. The affidavit does not contain the affiant's date of birth.

A January 29, 2007 affidavit signed by [REDACTED] brother, [REDACTED] stating in pertinent part that: he was born on April 13, 1934; that [REDACTED] was born in Imperial, California on April 22, 1929; and that [REDACTED] resided in Imperial County until the beginning of 1950, when she moved to Sonora, Mexico.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The Board of Immigration Appeals (Board) stated in *Matter of E-M-*, 20 I&N Dec. 77, 80 (BIA 1989) that:

[W]hen something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true.

Truth is to be determined not by the quantity of evidence alone, but by its quality. The regulations specifically state that the evidence will be judged by its probative value and credibility. Therefore, the application of the "preponderance of the evidence" standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true.

The AAO finds that the evidence submitted by the applicant is consistent and credible, and the AAO finds that the applicant has established by a preponderance of the evidence that his mother was physically present in the U.S. for ten or more years between April 29, 1929 and 1950, at least five years of which occurred after [REDACTED] turned fourteen.

The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). In the present matter, the applicant has met his burden of proof. The appeal will therefore be sustained, and the application will be approved.

ORDER: The appeal is sustained and the application is approved.