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

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: APR 14 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Former Section 301(a)(7) of the 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, Chief
Administrative Appeals Office

DISCUSSION: On January 7, 1974, the applicant filed a Form N-600, Application for Certificate of Citizenship, that was denied by the legacy Immigration and Naturalization Service. Accordingly, the Field Office Director, Harlingen, Texas, treated the Form N-600 filed by the applicant on August 13, 2007 as a motion to reopen. The field office director denied the applicant's motion to reopen and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 27, 1968 in Mexico. The applicant's father, [redacted], was born on February 1, 1940 and acquired U.S. citizenship at birth. The applicant's mother, [redacted], held Mexican citizenship at the time of the applicant's birth and the Form N-600 indicates that she is now a lawful permanent resident of the United States. The applicant's parents married on July 11, 1960. The applicant seeks to establish U.S. citizenship pursuant to section 301(a)(7) of the Immigration and Nationality Act of 1952 (1952 Act); 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her father.

"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 October 27, 1968. Therefore, she must establish her claim to U.S. citizenship under section 301(a)(7) of the 1952 Act, the applicable immigration statute in effect in 1968.

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.

On August 22, 2007, the field office director denied the Form N-600 because she found the record did not establish that the applicant's U.S. citizen father had been physically present in the United States for periods totaling ten years, at least five of which followed his 14th birthday. On appeal, the applicant's counsel contends that the field office director erred in reaching this conclusion. He asserts that the affidavit sworn by [redacted] and the evidence provided by the Social Security Administration's earnings statement for Mr. [redacted] establish that he was physically present in the United States for a total of 13 years.

The AAO finds the record to contain the following evidence regarding [redacted]' presence in the United States prior to the birth of the applicant:

- An affidavit sworn by [redacted] stating that he came to the United States at 12 years of age.
- A copy of a AutoTrackXP screen showing that [redacted]' social security card was issued in California between 1956 and 1957.

- Social security earnings statements for [redacted], covering the period January 1956 through December 1968, and his older brother, [redacted], covering the period January 1957 through December 2000.

- Copies o[redacted] Social Security card, his State of Texas identification card and his Selective Service Registration card, dated February 3, 1958.

- Copies of the Certificates of Citizenship issued to the children of [redacted] brother, [redacted]

While the AAO has carefully considered the above documentation, it does not find it sufficient to demonstrate 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.

In his affidavit, [redacted] states that his mother brought him and his brother, [redacted], to the United States when he was 12 years of age, i.e., in 1952. He indicates that the family worked for a short period of time in Texas as field laborers before moving to Dinuba, California, where they picked peaches for five years. In 1957, [redacted] reports, he and Leonel returned to Texas to work in the cotton gins in Corpus Christi and his mother moved to Escobares, Texas. He was still living in Texas, [redacted] states, when he obtained his certificate of citizenship in 1959. [redacted] states that he married his wife in Mexico in 1960, but then lived in California during their marriage. [redacted] asserts that all nine of his brother Leonel's children have acquired U.S. citizenship through their father.

While [redacted] states that he came to the United States in 1952 at 12 years of age, the record offers no documentary evidence in support of his claim, including affidavits from individuals who may have known him and his family at this time and can attest to their presence in Texas and California. Absent some type of supporting documentation, [redacted]' assertion is not sufficient proof that he began residing in the United States at the age of 12. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also notes that information provided by [redacted]' affidavit does not appear to be consistent with the employment recorded in his Social Security earnings statement. Although [redacted] indicates that in 1957, he and his brother moved to Corpus Christi, Texas and remained there for several years, the only income reported in his Social Security statement during the years 1957 – 1959/60 comes from California-based employers. No employment with a Texas-based company is recorded until 1966. Moreover, although [redacted] indicates that he was living in California at the time of the applicant's 1968 birth, his earnings statement only reports earnings for employers based in Illinois and Texas. While the AAO notes that there may be ready explanations for the discrepancies between [redacted]' recollections and his Social Security earnings statement, the record does not provide them. Accordingly, the AAO does not find [redacted]' affidavit to offer a reliable history of his presence in the United States prior to the applicant's birth.

The record does establish that [redacted] received a social security card in 1956 or 1957, and that he worked in the United States between 1956 and the applicant's 1968 birth. His Social Security earnings statement does not, however, establish that he was physically present in the United States for all of this 13 year period. As noted by the field office director, the earnings statement for [redacted] during the period 1956 to 1967 does not report [redacted] income by quarters and [redacted]' annual earnings during these years are not substantial enough to establish year-round employment without some type of corroborating evidence. Although the AAO acknowledges the difficulty of documenting agricultural employment that took place 40 to 50 years ago and notes that such employment may not have been compensated at minimum wage levels or reported, the burden is, nevertheless, on the applicant to establish that she is eligible for the benefit she seeks. 8 C.F.R. § 341.2(c). In the absence of documentary evidence, the regulation at 8 C.F.R. § 103.2(b)(2) allows the submission of affidavits The record, however, contains no affidavits sworn by [redacted] former employers or coworkers, including the applicant's older brother, attesting to the periods during which Mr. [redacted] worked in the United States. [redacted]' in his affidavit states that from 1952 through 1957, his family's work for a particular employer was compensated with housing and food. While the AAO acknowledges claim, his unsupported assertion, as previously noted, is insufficient proof of his presence in the United States. *Matter of Soffici, supra.*

The earnings statement for [redacted] older brother, [redacted] Mr. [redacted]z' Selective Service Registration card, his Social Security card and his State of Texas identification are not evidence of [redacted]z' physical presence in the United States prior to the applicant's birth. The list of [redacted]' employers for the years 1957-1968 largely parallels that of his younger brother, but does not report income by quarter or reach levels that would establish his year-round employment in the United States. The Selective Service Registration card proves only that [redacted]z registered for the draft in Edinburgh, Texas in 1958, not that he was physically present in Texas at that time. Moreover, the AAO notes that [redacted]' address on the card is a post office box in Roma, Texas, rather than a residence. [redacted] social security card documents only his registration for social security benefits. His State of Texas identification card does not indicate the period of his residence in Texas and is, itself, undated.

[redacted] claim that all of his brother's children have acquired citizenship through their father is noted and is, in part, documented in the record by the certificates of citizenship awarded to five of his nieces and nephews. The AAO observes, however, that each application filing is a separate proceeding with a separate record and that Citizenship and Immigration Services (CIS) is limited to the information contained in each individual record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). In the present case, the AAO's decision concerning the applicant's eligibility for a certificate of citizenship must be based on the record before it. The granting of certificates of citizenship to [redacted]' nieces and nephews does not demonstrate that the current record establishes the applicant's eligibility to obtain citizenship under section 301(a)(7) of the Act.

Based on its review of the present record, the AAO does not find the applicant to have provided sufficient evidence to establish the length of time that her father was in the United States prior to her birth. Accordingly, the AAO cannot conclude that the applicant has satisfied the physical presence requirements of section 301(a)(7) of the Act and the appeal will be dismissed.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has not met her burden.

ORDER: The appeal is dismissed.