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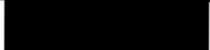
U.S. Citizenship
and Immigration
Services

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FILE:



Office: EL PASO, TX

Date: DEC 04 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under former section 309(a) of the
Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a)

ON BEHALF OF APPLICANT:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, Texas and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on November 7, 1962 in Mexico. The applicant's father, [REDACTED], now deceased, was born on July 31, 1924 in Redford, Texas. The applicant's mother, [REDACTED] was at the time of the applicant's birth, a citizen of Mexico and the record does not indicate that she has acquired another nationality. The applicant's parents married on December 13, 1971. The applicant seeks a certificate of citizenship pursuant to former section 309(a) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1409(a), based on the claim that he acquired U.S. citizenship at birth through his natural father.

Based on the evidence of record, the field office director determined that the record did not establish that [REDACTED] had been physically present in the United States for a period(s) totaling at least ten years prior to the applicant's birth, as required by former section 301(a)(7) of the Act. He denied the applicant's Form N-600, Application for Certificate of Citizenship, accordingly. *Decision of the Field Office Director*, dated November 2, 2007.

On appeal, the applicant, through counsel, states that the preponderance of evidence in the record is sufficient to establish his eligibility for a certificate of citizenship and that the field office director erred in reaching his decision. *Form I-290B, Notice of Appeal or Motion*, dated November 30, 2007.

Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached twenty-one years of age. As of that date, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) amended section 309, applying the changed provisions to persons who were not yet 18 years of age. As the applicant was 24 years old on November 14, 1986, his application must be considered under the requirements of section 309(a), as they existed prior to the 1986 amendments.

Prior to November 14, 1986, section 309(a) of the Act stated:

(a) The provisions of paragraphs (3), (4), (5), and (7) of section 301(a), and of the paragraph (2) of section 308 of this title shall apply as of the date of birth to a child out-of-wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the 1952 Act stated, 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: *Provided*, That any periods of honorable service in the

Armed Forces of the United States by such citizen parents may be included in computing the physical presence requirements of this paragraph.

Should the applicant establish his eligibility under former section 309(a) of the Act, former section 301(a)(7) requires that he also prove that, prior to his birth, [REDACTED] was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which followed [REDACTED] 14th birthday. Honorable service in the U.S. military, employment with the U.S. Government or with certain international organizations by U.S. citizen parents may qualify as physical presence in the United States.

As the record includes sufficient evidence to establish that the applicant was born out of wedlock to a U.S. citizen father and was, thereafter, legitimated by the 1971 marriage of his parents when he was nine years old, the applicant has met the requirements of former section 309(a) of the Act. The only remaining issue is whether he has demonstrated that [REDACTED] was physically present in the United States for a period (s) totaling at least ten years prior to his 1962 birth, five of which followed Mr. [REDACTED] 14th birthday.

The record contains the following evidence to establish [REDACTED] presence in the United States: a delayed certificate of birth issued by Presidio County, Texas showing [REDACTED] to have been born on July 31, 1924 in Redford, Texas; an affidavit sworn by [REDACTED], the applicant's half-sister, dated May 26, 2007; an affidavit sworn by [REDACTED], the applicant's sister, dated May 17, 2007; [REDACTED] selective service registration certificate, dated September 18, 1948; a letter from the Social Security Administration in Odessa, Texas, dated December 8, 2006; and [REDACTED] social security card.

[REDACTED] selective service registration certificate demonstrates that he registered in Texas for military service in 1943 and 1948, and the letter from the Social Security Administration indicates a record of U.S. earnings for [REDACTED] during 1955.¹ In her affidavit, [REDACTED] states that she was born in 1945 and is the oldest of [REDACTED] children (born to his first wife) and that during her childhood she visited him in Presidio, Texas, his place of residence. Ms. [REDACTED] specifically recalls a visit to Presidio in 1958 when she was 13 years old. [REDACTED]'s affidavit indicates that she was born in 1954 in Mexico, but that, during her childhood, [REDACTED] lived and worked in Presidio, Texas. She states that, after his 1971 marriage to her mother, [REDACTED] moved the family to Texas. She lists his previous employers as the Herrera Supermarket, [REDACTED] clothing store, the U.S. Post Office, and the former U.S. Immigration and Naturalization Service and the U.S. Customs Service at the international bridge in Presidio.

The two affidavits from the applicant's sisters offer consistent accounts of their father's presence in the United States and support the documentary evidence of his physical presence that has been submitted by the applicant. While the AAO notes the limited nature of the documentary evidence provided by the applicant, it also acknowledges the difficulty of documenting the residency of an

¹ Although the SSA also reports earnings for [REDACTED] in the years 1965 – 1984, these years follow the applicant's birth and, therefore, do not satisfy the requirements of former section 301(a)(7) of the Act.

individual born more than 80 years ago in rural America. It, therefore, finds that, when considered together, the documentary evidence and the affidavits establish, by a preponderance of evidence, that [REDACTED] was physically present in the United States for a period of ten years prior to the applicant's birth, five of which followed his 14th birthday. Accordingly, the applicant has established eligibility for a certificate of citizenship under former section 309(a) of the Act. The appeal will be sustained.

ORDER: The appeal is sustained.