

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E2



FILE:



Office: HARLINGEN, TEXAS

Date: APR 07 2005

IN RE:

Applicant:



APPLICATION:

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

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.

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 dismissed.

The record reflects that the applicant was born on December 15, 1959 in Mexico. Counsel asserts that the applicant's mother was born in Texas on December 14, 1931 and that she is a United States citizen. The applicant's father was born in Mexico and is not a U.S. citizen. The record reflects that the applicant's parents were married in Mexico on December 17, 1951. The applicant seeks a certificate of citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found that, based on the evidence in the record, the applicant had failed to establish that his mother resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after his mother turned fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the counsel states that affidavits regarding the applicant's mother's residence in the United States are attached to the Form I-290B. No such affidavits were found with the appeal, nor has the AAO received any additional evidence as of this date. The record is therefore complete.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). "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 in 1959 or 1960. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.

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.

The record must therefore establish that the applicant's mother was a U.S. citizen at the time of the applicant's birth and that her mother met U.S. physical presence requirements prior to the applicant's birth. The record contains the following evidence relating to the applicant's mother's U.S. birth and residence:

A Delayed Certificate of Birth from Scurry County, Texas, reflecting that [REDACTED] applicant's mother) was born on December 14, 1931 in Snyder, Texas, to [REDACTED]. The birth certificate was filed on January 21, 1974.

A Certificate of Baptism reflecting that [REDACTED] was born in Scurry County, Texas on December 14, 1931, to [REDACTED] and that she was baptized in Texas on November 8, 1932.

A marriage certificate for [REDACTED] (applicant's mother) reflecting that his mother's place of birth was Colorado, Texas, but her nationality was Mexican. The marriage certificate, registered December 17, 1951, shows the applicant's mother's age as 18, which would mean she was born in 1933, not 1931, as shown in the documents above.

The applicant's birth certificate, showing his birth date as December 15, 1960, rather than 1959, as indicated on his Form N-600. His birth certificate lists his mother's nationality as "norteamericana" (U.S.) and her age as 39, which would mean she was born in 1921, not 1931, as shown in the first two documents listed above.

The AAO finds that the evidence in the record contains material discrepancies relating to the applicant's mother's date of birth, as noted above. It is thus not possible to determine when the applicant's mother attained the age of 14, for purposes of assessing whether she fulfilled the residency requirements set forth at § 301(a)(7) of the former Act. The AAO also notes that, in any case, the record contains no evidence establishing that the applicant's mother was physically present in the United States for any period of time subsequent to her own birth and prior to the applicant's birth, whether it occurred in 1959 or 1960.

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. Based on the concerns noted above, the AAO finds that the applicant failed to establish by a preponderance of the evidence that his mother fulfilled the residency requirements described in the former Act. Accordingly, the applicant is not eligible for citizenship under § 301(a)(7) of the former Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.