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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: MINNEAPOLIS, MINNESOTA

Date: 7/1/08

IN RE:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Minneapolis, Minnesota, 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 June 23, 1968 in Mexico. The applicant's mother, [REDACTED] was born on February 7, 1938 in Mexico, and she was not a United States (U.S.) citizen. The applicant's father, [REDACTED] was born on March 8, 1934, and he was a U.S. citizen. The applicant's parents married on June 11, 1961. [REDACTED] died on October 10, 2000. The applicant seeks a certificate of citizenship pursuant to section 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 father.

The director assumed that the applicant's father had a claim to U.S. citizenship at birth, even though the applicant provided no official documentation establishing that his father was a U.S. citizen. The director concluded that the applicant did not acquire U.S. citizenship at birth through his father because he failed to establish that his father had the required ten years physical presence in the United States prior to the applicant's birth. *Decision of the District Director, Minneapolis, Minnesota, dated August 11, 2004.*

The AAO will not disturb the director's assumption that the applicant's father had a claim to U.S. citizenship at birth through his mother. Accordingly, this decision will only discuss whether the applicant has established that his father was physically present in the United States for ten years prior to the applicant's birth.

On appeal, counsel contends that the director's denial was premature because: 1) He did not review the files of the applicant's paternal aunts, which may contain evidence corroborating the applicant's claim to derivative citizenship through his father; 2) He did not interview the applicant, who could have provided sworn testimony concerning his citizenship claim. In support of the appeal, counsel submitted an affidavit from the applicant's mother [REDACTED]

"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 the present case was born in 1968, therefore Section 301(a)(7) of the former Act applies.

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 the present case the applicant must establish that his father was physically present in the United States for ten years between his birth on March 8, 1934 and the applicant's birth on June 23, 1968. Five of those years must be after March 8, 1948, when the applicant's father turned fourteen years of age.

Counsel contends that the files of the applicant's paternal aunts [REDACTED] sisters, who obtained derivative citizenship through their mother) may contain evidence corroborating the applicant's claim to

derivative U.S. citizenship. The AAO notes that the files contain no evidence related to the length of time that [REDACTED] lived in the United States.

Counsel asserts that the director should have interviewed the applicant. Counsel does not explain how a lack of interview prejudiced the applicant's claim to derivative citizenship. The applicant had an opportunity to submit affidavits and any other relevant evidence to support his claim.

The record contains the following documents related to the claim that prior to the applicant's birth, his father was physically present in the United States for longer than ten years, at least five of which were after attaining the age of fourteen years:

- 1) A June 20, 2004 affidavit from [REDACTED] the applicant's mother and the wife of [REDACTED]
- 2) A July 15, 2003 affidavit from [REDACTED] younger sister of [REDACTED]
- 3) A July 20, 2003 affidavit from [REDACTED] older sister of [REDACTED]

Catalina Guerrero stated that:

My husband contributed to the family income since he was very young. I know because he told me that in order to help pay for his sisters' studies and contribute to the family income, one of his relatives found him a job in a ranch [REDACTED] that must have been around 1950 if I recall correctly. My husband worked there for a few years only, because he believed he was working illegally. He ignored he had [sic] the right to work legally by acquiring American citizenship through his mother.

Eventually, the years passed and he left the farming job. When he reached adulthood he moved for work to Camargo, Mexico; where we later met, got married and had three children.

[REDACTED] stated that [REDACTED] worked at a ranch in Rio Grande, Texas for a little more than four years and then settled down in Mexico. [REDACTED] further stated that after moving to Mexico, [REDACTED] and his family regularly visited family in Texas.

[REDACTED] stated that [REDACTED] worked in the United States for three or four years and then returned to Mexico, where he got married, raised a family and worked. [REDACTED] further stated that after moving to Mexico, it was normal for [REDACTED] and his family to visit family in Texas every weekend.

The affidavits submitted by counsel do not establish that [REDACTED] was physically present in the United States for at least ten years, at least five of which were after attaining the age of fourteen, prior to the applicant's birth. [REDACTED] indicated that [REDACTED] worked in the United States for a "few years only" but does not specify the number of years. [REDACTED] and [REDACTED] placed [REDACTED] in the United States for about four years. They also indicated that [REDACTED] regularly visited Texas after moving to Mexico, but they did not specify the number of years that these visits occurred.

The applicant's Application for Certificate of Citizenship indicated that [REDACTED] lived in the United States from 1936-1953; however, aside from the affidavits discussed above, the record contains no other evidence addressing the length of time [REDACTED] lived in the United States. Accordingly, the AAO finds that counsel has not established that [REDACTED] was physically present in the United States for at least ten years, at least five of which were after attaining the age of fourteen, prior to the applicant's birth.

As the AAO did not find that the applicant's father resided in the United States for the appropriate period of time, the applicant's appeal will be dismissed.

ORDER: The appeal is dismissed.