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U.S. Citizenship
and Immigration
Services



FL

FILE:



Office: HARLINGEN, TEXAS

Date:

JAN 31 2005

IN RE:

Applicant:



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:



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, 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 applicant was born on December 10, 1953, in Mexico. The applicant's mother, [REDACTED] was born in Texas on [REDACTED] and she is a United States citizen. The applicant's father, [REDACTED] was born in Mexico, and he is not a U.S. citizen. The applicant's parents married on December 17, 1951, in Mexico. 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) (now known as section 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director determined that the applicant had failed to establish his mother was physically present in the United States for ten years prior to his birth, at least five years of which occurred after she reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts that it is not possible to obtain primary and secondary evidence for the applicant's mother's [REDACTED] physical presence in the U.S. between 1932 and 1951, because she did not attend school and because she worked as a farm laborer in the United States. Counsel asserts that the affidavits submitted by the applicant establish that [REDACTED] was physically present in the United States for the requisite time period set forth in section 301 of the Act. Counsel asserts further that the district director erred in not advising the applicant of deficiencies in his case via a Notice of Intent to Deny, and counsel requests that the matter be remanded to the district director for re-examination of the evidence.

Counsel provided no legal basis to establish that the district director was required to issue a Notice of Intent to Deny letter to the applicant prior to denying his citizenship application. The AAO notes further that pursuant to 8 C.F.R. 341.2(c), the applicant has the burden of proof of establishing his claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. Accordingly, the AAO finds that a remand of the present matter to the district director is unwarranted.

"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 was born in Mexico in 1953. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore applies to his 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 the present matter, the applicant must therefore establish that his mother was physically present in the U.S. for ten years between December 14, 1931 and December 10, 1953, and that five of those years occurred after December 14, 1945, when Ms. [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED]'s physical presence in the United States between December 14, 1931 and December 10, 1953:

A Delayed Certificate of Birth stating that [REDACTED] was born in Texas on [REDACTED]

A Baptismal Certificate stating that [REDACTED] was baptized in Texas on [REDACTED]

A notarized affidavit dated April 6, 1999, written by [REDACTED] stating in pertinent part that during the 1940s he often worked with [REDACTED] and her family on farms near Mission, Texas, and that he believes that [REDACTED] and her family lived near Mission, Texas during that time because they worked often.

A notarized affidavit dated April 6, 1999, written by [REDACTED] stating in pertinent part that during the 1940s she often worked with [REDACTED] and her family on farms near Mission, Texas, and that she believes [REDACTED] lived with her family in or near Mission, Texas during the time they worked together.

A notarized affidavit dated April 6, 1999, and written by [REDACTED] and [REDACTED] stating in pertinent part that they met [REDACTED] and her family in 1948, and that they often worked together in Progreso, Texas during that year.

8 C.F.R. § 103.2(b)(2) states, in pertinent part:

(2) *Submitting secondary evidence and affidavits* – (i) *General*. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petitions who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available*. Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available.

The AAO notes that the only primary or secondary evidence contained in the record regarding [REDACTED]'s physical presence in the U.S. are [REDACTED] December [REDACTED] birth certificate and her November [REDACTED] baptismal certificate.

The AAO notes further that the applicant failed to provide evidence to demonstrate that he made any effort to locate evidence of his mother's physical presence in the United States prior to his birth. The applicant also

failed to demonstrate that primary evidence or relevant secondary evidence relating to [REDACTED] physical presence in the U.S. is unavailable. Accordingly, the AAO finds that the applicant has failed to overcome the presumption of ineligibility as set forth in 8 C.F.R. § 103.2(b)(2).

Moreover, the AAO finds that the three affidavits submitted by the applicant lack probative value, in that they contain no supporting evidence or information to substantiate their employment and residence claims and because they lack basic and material details regarding the exact dates that the applicant's mother resided in the United States, the addresses at which she and her family resided, or the names of their employers and the locations of employment.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.