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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TEXAS

Date: MAR 10 2005

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "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 record reflects that the applicant was born in Mexico on August 21, 1970. The applicant's father, [REDACTED] (Mr. [REDACTED]) was born in Mexico on July 20, 1930. Mr. [REDACTED] derived U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother, [REDACTED] was born in Mexico, and she is not a U.S. citizen. The record reflects that the applicant's parents were married in Mexico on April 27, 1957. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act) (now known as section 301(g) of the Immigration and Nationality Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director found that the applicant had failed to establish that his father was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after Mr. [REDACTED] reached the age of fourteen. The application was denied accordingly.

On appeal, the applicant asserts that his father made numerous family visits to relatives in the United States, and that taking the visits into account, his father met the physical presence requirements set forth in section 301(a)(7) of the former Act.

"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 on August 21, 1970. Section 301(a)(7) of the former Act is therefore applicable to his derivative 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 establish that his father was physically present in the U.S. for ten years between July 20, 1930 and August 21, 1970, and that five of those years occurred after July 20, 1944, when Mr. [REDACTED] fourteen.

The evidence relating to Mr. [REDACTED] physical presence in the United States and Mexico during the requisite time period consists of the following:

A U.S. Certificate of Citizenship reflecting that Mr. [REDACTED] was born in Mexico on July 20, 1930.¹

A Social Security Card issued to Mr. [REDACTED] on an unknown date.

An affidavit signed by [REDACTED] on March 12, 2001, in Los Angeles, California,

¹ The AAO notes that the date that the Certificate of Citizenship was approved is illegible.

stating that he is Mr. [REDACTED] cousin and that Mr. [REDACTED] lived in the United States from 1930 until the present.

The AAO finds that the affidavit written by Mr. [REDACTED] lacks probative value, in that it is unsupported by any corroborative evidence and lacks material details regarding the affiant's source of knowledge and regarding specific dates of residence or addresses of places that Mr. [REDACTED] resided in the United States. The AAO finds further that neither the Certificate of Citizenship nor the Social Security Card issued to Mr. [REDACTED] establish that he was physically present in the U.S. for ten years between 1930 and 1970, more than five years of which occurred after 1944. The AAO finds further that the applicant's general assertion on appeal that Mr. [REDACTED] met physical presence requirements through numerous U.S. family visits lacks material detail and is uncorroborated by any evidence in the record.

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. The AAO finds that the applicant failed to establish by a preponderance of the evidence that his father was physically present in the U.S. for ten years, at least five of which were after the age of fourteen. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.