

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2



FILE:  Office: TUCSON, ARIZONA 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Tucson, Arizona, 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 September 27, 1960. The applicant's father, [REDACTED] (Mr. [REDACTED]), was born in Arizona on April 10, 1938. The applicant's mother, [REDACTED] was born in Mexico, and she became a naturalized U.S. citizen on August 27, 1993, when the applicant was thirty-two years old. The record reflects that the applicant's parents married in Mexico on April 20, 1956. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director found that the applicant 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 submits documentation reflecting his attempt to obtain U.S. Census Record information about his father. In addition, the applicant submits an affidavit discussing his father's physical presence in the United States. The applicant subsequently requests additional time to submit documentation relating to his derivative citizenship claim.

The AAO notes that as of the date of the present decision, more than nine months have passed since the applicant's request for additional time to supplement his appeal. No additional information has been received by the AAO. The AAO will therefore decide the applicant's appeal based on the evidence contained in the present record.

"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 November 9, 1960. 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 April 10, 1938 and November 9, 1960, and that five of those years occurred after April 10, 1952, when Mr. [REDACTED] was fourteen.

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

An Arizona Birth Certificate reflecting that Mr. [REDACTED] was born in Douglas, Arizona

on April 10, 1938.

A Quitclaim Deed reflecting that Mrs. [REDACTED] Mr. [REDACTED] and his wife, [REDACTED], and a single man [REDACTED] purchased a home in Cochise County, Arizona on August 9, 1939.

An affidavit, signed in Tucson, Arizona on April 29, 2004, by [REDACTED] et, stating that she is Mr. [REDACTED] sister, and that Mr. [REDACTED] was born in Douglas, Arizona on April 10, 1938, and he attended Loretto Catholic School in Douglas, Arizona. The affiant indicates that Mr. [REDACTED] married in Mexico City on April 21, 1958, and subsequently returned to the United States. The affiant states further that to the best of her knowledge, Mr. [REDACTED] worked on both the Mexican and U.S. sides of the border.

An unnotarized affidavit with illegible signature, dated June 13, 1996, and written on Judge [REDACTED] letterhead, stating that Mr. [REDACTED] resided in Douglas, Arizona at [REDACTED] for many years, and that he attended Douglas schools.

A letter dated August 27, 2001, from the City of Douglas Mayor [REDACTED], stating that he recalls attending grades 1 through 6 with Mr. [REDACTED] at Loretto Catholic School in Douglas, Arizona, and that later, Mr. [REDACTED] resided in Douglas and was an exporter of cattle.¹

The AAO notes that the record contains no evidence from the Loretto Catholic School to establish that Mr. [REDACTED] attended school there. The record also contains no evidence from Mr. [REDACTED] employers and the record contains no evidence to establish that Mr. [REDACTED] resided in Douglas, Arizona anytime after 1939. Moreover, the AAO finds that the affidavits submitted by the applicant lack probative value, in that they are unsupported by any corroborative evidence and because they lack material details regarding the affiant's source of knowledge and regarding specific dates of residence and employment or addresses of places that Mr. [REDACTED] resided and worked in Douglas, Arizona.

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.

¹ The AAO notes that the applicant's grandfather's real estate tax record information is dated between 1977 and 1982, well after the applicant's birth and subsequent to his grandfather's apparent divorce from Mr. [REDACTED] mother. The information therefore has no probative value regarding Mr. [REDACTED] physical presence in the United States during the requisite time period. The AAO notes further that the information relating to the applicant's school attendance as well as relating to Mr. [REDACTED] 1979 death in Sonora, Mexico, has no probative value relating to the applicant's citizenship claim