



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date: **NOV 29 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:

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, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form N-600, Application for Certificate of Citizenship (N600 Application) reflects that the applicant was born in Mexico on [REDACTED]. The N600 application reflects that the applicant's father, [REDACTED] [REDACTED] born in the U.S. on March 11, 1931, and that he was a U.S. citizen. The applicant's mother was born in Mexico and is not a U.S. citizen. The N-600 application reflects that the applicant's parents married in Mexico on January 30, 1954. The applicant presently seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father 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 (the Act); 8 U.S.C. § 1401(g)).

The district director determined that the affidavit and photo evidence submitted by the applicant failed to establish by a preponderance of the evidence that his father was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after his father reached the age of fourteen, as required by section 301(a)(7) of the former Act.

On appeal, the applicant indicates that the affidavit submitted establishes his father was in the U.S. for the requisite time period set forth in the former Act, and the applicant appears to request oral argument of his case.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.3(b) provides that an applicant must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (CIS) will grant oral argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this matter the AAO finds that no cause for oral argument has been stated or shown. The applicant's request for oral argument will therefore be denied.

"[T]he 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 N-600 application reflects that the applicant was born in Mexico in 1957, and that he is the legitimate child of his mother and U.S. citizen father. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.¹

¹ The AAO notes that although the N600 application indicates that the applicant's birth certificate, his father's birth certificate, and his parents' marriage certificate were submitted, the record of proceedings presented to the AAO does not contain copies of these documents.

8 C.F.R. § 103.3 states in pertinent part:

(2)(iv) *Forwarding of appeal to AAU.* [I]f the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the AAU [AAO] in Washington, DC.

The missing record of proceedings documentation is relevant to an AAO determination regarding the applicant's parentage, his father's U.S. citizenship, the applicant's legitimacy as a child, and the dates of birth for both the applicant and his father. A remand to the district director for proper submission of the applicant's supporting documentation and any related record of proceedings would thus be justified. The AAO will not remand the present matter, however, based

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 order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant must establish that his father was physically present in the U.S. for ten years between March 11, 1931 and August 29, 1957, and that five years occurred after March 11, 1945, when the applicant's father turned fourteen.

The record contains copies of photos, and a May 27, 2003 affidavit signed by [redacted] stating that she is [redacted] older sister, that [redacted] was born in Shelton, Texas on March 11, 1931, that he and their family moved to Mexico in 1938, and that [redacted] went to school and married in Mexico, but returned to the U.S. to work for large periods of time between 1949 and 1960, living with the affiant or other siblings in the U.S. during those periods.

The AAO finds that the evidence contained in the record fails to establish, by a preponderance of the evidence that [redacted] was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after he turned fourteen. The AAO notes that the photograph evidence contained in the record does not establish the amount of time that [redacted] was physically present in the United States, or even who is in the photos and where and when the photos were taken. The AAO notes further that the information contained in the affidavit submitted by the applicant is uncorroborated by independent evidence, and the affidavit itself is vague and lacks basic and material details regarding [redacted] employment in the United States and regarding the dates that [redacted] lived at the claimed U.S. addresses.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

on the N600 indication that the documents were presented to the district director, based on the district director's apparent acceptance of the applicant's date of birth and parentage, his legitimacy, and his father's date of birth and U.S. citizenship, and based on the fact that, as discussed in the present AAO decision, the AAO finds the applicant is, in any event, ineligible for citizenship because the affidavit and photos presented fail to establish by a preponderance of the evidence that the applicant's father meets the physical presence requirements set forth in section 301(a)(7) of the Former Act.