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U.S. Citizenship  
and Immigration  
Services

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FILE: Office: HARLINGEN, TX Date: NOV 21 2006

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 on May 24, 1957 in Mexico. The applicant's father, [REDACTED] was born in Houston, Texas on May 11, 1916. The applicant's mother, [REDACTED] was at the time of her birth, a citizen of Mexico and, based on the Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents were married on February 14, 1943. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her father.

"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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in Mexico on May 24, 1957. Therefore, she must establish her claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1957.

Section 301(a)(7) of the 1952 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.

The applicant must, therefore, establish that her father, [REDACTED] was a U.S. citizen at the time of her birth and that he met the physical presence requirements set forth above prior to her birth.

The record contains a copy of an October 1, 1982 Texas birth certification indicating that [REDACTED] was born in Houston, Texas on May 11, 1916. Therefore, the record demonstrates that [REDACTED] was a U.S. citizen at the time the applicant was born.

To establish [REDACTED] presence in the United States for the requisite period, the applicant initially submitted copies of two letters whose writers, [REDACTED] knew [REDACTED] in Houston from 1953/54 to 1957 and that [REDACTED] still resides in Texas; an affidavit sworn by [REDACTED] stating that he lived in the United States from his birth until 1934 when he returned to Mexico, and that, between 1942 and 1997, he divided his time between Mexico and Houston; a letter written [REDACTED] in Mexico by [REDACTED] in 1935, sending him his U.S. report card; a page from the [REDACTED] conducted in Houston, which, the applicant claims, lists [REDACTED] as [REDACTED] and an undated Fisher Body Craftsman's Guild card issued to [REDACTED] at a Houston, Texas address. The district director found the preceding evidence insufficient to establish that [REDACTED] had been physically present in the United States for a total of ten years, at least five of which followed his 14<sup>th</sup> birthday, noting that the letters submitted to establish [REDACTED] Houston residence beginning in 1953/54 dealt with a time period subsequent to the applicant's birth. He denied the application accordingly.

On appeal, the applicant submits a statement outlining the evidence she has provided in relation to her father's time in the United States. In addition, she indicates that a request made to the Houston School District for her

father's school records has not yet produced any documentation. In support of her statements, the applicant submits copies of the records request made to the Houston Independent School District; maps of the Rusk Elementary School, which [REDACTED] he attended between 1929 and 1932; an information sheet on the Houston ward in which [REDACTED] states he once lived; a letter from a [REDACTED] who states he first met [REDACTED] Houston in 1950 when he was a child; photographs of [REDACTED] unidentified as to date or location; and a letter from [REDACTED] who states that she met [REDACTED] in 1942 in Brownsville, Texas "on his trips to and from Houston" and that she met with him in subsequent years in Houston.

The AAO has reviewed the documentation on which the director based his decision and that provided on appeal. While, as the applicant was not born until 1957, the AAO finds the director to have erred in discounting the letters written by [REDACTED] it, nevertheless, concurs with the director's conclusion that the applicant has failed to establish that, prior to her birth, her father was physically present in the United States for a total of ten years, at least five of which followed his 14<sup>th</sup> birthday.

The applicant has provided no actual documentation of her father's U.S. residence. The copies of [REDACTED] records request to the Houston Independent School District, the maps showing the Rusk Elementary school, the information sheet on the Houston ward where [REDACTED] claims to have previously lived do not establish that he was present in the United States for the required period of time. Neither do the photographs that cannot be identified as to date and location, or the 1935 letter, which offers no indication as to the length of time that [REDACTED] was in the United States. Although the AAO agrees that [REDACTED] is listed on the 1930 Census for Houston, it does not find the record to establish that this individual is the applicant's father. The notarized statement explaining why [REDACTED] appears as [REDACTED] in the census report indicates that he was, at the time, living with his godparents, [REDACTED]. However, the census page submitted by the applicant lists [REDACTED] as residing with a head of household whose last name is [REDACTED]. Accordingly, the copied page from the 1930 Census listing [REDACTED] as residing in Houston does not place [REDACTED] the United States.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) requires the following when evidence does not exist or is unavailable:

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 petition 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.

The AAO notes that the applicant has submitted a sworn statement from her father, and four letters from friends as proof of his residence in the United States. However, these documents do not meet the burden of proof in these proceedings. The applicant has failed to demonstrate that primary or second evidence of her father's residence does not exist or cannot be obtained. Instead, her statement on appeal indicates that her father's school records do exist, but are not yet available. Moreover, the applicant has submitted only one affidavit, that sworn by her father. The four letters that attest to [REDACTED] residence in the United States

do not constitute affidavits, sworn to or affirmed, in front of a notary public. Therefore, the applicant has not complied with the regulatory requirements at 8 C.F.R. § 103.2(b)(2)(i). Moreover, the statements made in [REDACTED]'s affidavit and in the letters from his friends either contain inconsistencies or do not attest to the length of time he lived in the United States.

In his affidavit, [REDACTED] states that he moved to Mexico in 1934, returning to the United States in 1942. However, the copy of his 1943 marriage certificate included in the record indicates that at that time he was still living in Matamoros. [REDACTED] 2005 letter states that he first knew the applicant's father beginning in 1953, that they lived in the same Houston neighborhood and that he "grew up [REDACTED] as part of my family." He also indicates that [REDACTED] now lives in Brownsville, Texas. However, [REDACTED] affidavit indicates that between 1942 and 1997, he was not residing in Houston on a full-time basis, but divided his time between Houston and Mexico. In contrast to [REDACTED] statement that he lives in Brownsville [REDACTED] 2006 record request to the Houston Independent School District indicates that he has been living in Mexico for "quite a long time." The 2005 letter written by [REDACTED] states that he met [REDACTED] in 1954 at a time when [REDACTED] was planning to get married and going back and forth to Mexico, and that [REDACTED] life began to change when he started having children. However, the record establishes that in 1954 [REDACTED] had been married for 11 years. Other statements in the record indicate that [REDACTED] had become a father by 1948. Accordingly, it is not clear that [REDACTED] is the individual remembered by [REDACTED]. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The 2006 letter written by [REDACTED] states that she met [REDACTED] in Brownsville in 1942 and that she has personal knowledge that [REDACTED] lived for many years in Houston. She does not, however, state the post-1942 time periods during which she knows [REDACTED] to have been physically present in the United States. In his 2006 letter, [REDACTED] asserts that he remembers [REDACTED] as a friend of his uncle from the time he was eight years old, but does not state [REDACTED] was residing in the United States in 1950. Accordingly, neither letter addresses whether [REDACTED] was physically present in the United States for a total of 10 years prior to the applicant's birth. The AAO also notes that [REDACTED] states that [REDACTED] currently lives in Brownsville, Texas a statement that, as noted above, is inconsistent with the information provided in [REDACTED] 2006 request for his school records.

For the reasons discussed above, the record does not establish that the applicant's father was physically present in the United States for a total of ten years, five of which followed his 14<sup>th</sup> birthday, prior to her birth.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden in this proceeding and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.