

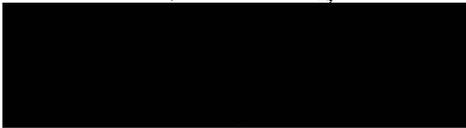
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HARLINGEN, TX Date: NOV 21 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the Immigration and Nationality Act of 1952, 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 November 16, 1963 in Mexico. The applicant's father, [REDACTED] became a U.S. citizen upon his birth on October 3, 1942 in Mexico. 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 December 30, 1960. 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 (9th Cir., 2000) (citations omitted). The applicant in this case was born in Mexico on November 16, 1963. 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 1963.

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 [REDACTED] certificate of citizenship indicating that he acquired citizenship as of the date of his birth, October 3, 1942. 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:

- An outline of the time spent by [REDACTED] in the United States beginning in October 1942 and ending in 1992.
- A September 27, 2005 affidavit signed by [REDACTED] indicating that he met [REDACTED] in Mexico in 1957 and came with him to the United States in 1962, working for Starr Produce in Rio Grande City, Texas between 1962 and 1994.
- Copies of [REDACTED] Social Security statement indicating earnings between 1963 and 1994; two Texas Employment Commission benefit claim determinations issued to [REDACTED] in relation to 1987 and 1988 claims; a Migrant and Seasonal Agricultural Workers Protection Act worker information sheet related to employment performed by [REDACTED] in 1986; an employee salary history in [REDACTED] name

for 1989-1990 from Starr Produce; [REDACTED] pay stubs from Starr Produce from the 1980s, 1990-1992, from Plantation Produce Company for 1986 and 1987, from Sem-Tex Produce for 1987, 1989 and 1990, from Sharyland Corporation for 1989, 1990-1991, and from Sanders Accounting Services for 1993; an August 13, 1994 check made out to [REDACTED] 1994 pay stub from [REDACTED] benefit claims payments made to [REDACTED] by the Texas Employment Commission in the 1970s; [REDACTED] 1997 Form W-2 Wage and Tax Statement issued by Whirlwind Steel Buildings in Houston, [REDACTED] U.S. tax returns for 1985, 1988 and 1997; undated postal money orders sent by [REDACTED] from Colorado; 1985 and 1988 W-2s issued to [REDACTED] by Starr Produce, and Sem-Tex Produce respectively; and 1989 wage statements issued to [REDACTED] by Sharyland Corporation and Star Produce.

A February 28, 2006 affidavit signed by [REDACTED] mother, indicating that he lived with her and his father at [REDACTED] near Edinburg, Texas from 1944 to 1947/48.

The director found the above evidence failed to establish that the applicant's father had been physically present in the United States for a total of ten years, at least five of which followed his 14th birthday, noting that the employment documentation submitted by the applicant established her father's presence in the United States following her birth, rather than before as required by section 301(a)(7) of the 1952 Act. He denied the application accordingly.

On appeal, the applicant submits one additional affidavit signed by [REDACTED] who states that he [REDACTED] his nephew, lived in Los Saenz, Texas from 1957 through 1961.

The AAO has reviewed the documentation on which the director based his decision and that provided on appeal. As noted by the director, the employment-related materials submitted by the applicant establish her father's presence in the United States in the years after her birth, rather than before and, therefore, do not satisfy the requirements of section 301(a)(7) of the 1952 Act. The only evidence in the record that relates to [REDACTED] presence in the United States prior to the applicant's birth on November 16, 1963 is provided by affidavit.

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.

In the instant case, the applicant has failed to demonstrate that primary or secondary evidence of her father's residence in the United States prior to her birth does not exist or cannot be obtained. Therefore, the applicant has not complied with the regulatory requirements at 8 C.F.R. § 103.2(b)(2)(i). Moreover, two of the affidavits – that from [REDACTED] – provide contradictory statements concerning [REDACTED] U.S. residence. [REDACTED] statement indicates that he m [REDACTED] Mexico in 1957 and that they came together to the United States in 1962. In the other affidavit, [REDACTED] states that he and the applicant's father lived in Los Saenz, Texas between 1957 and 1961. [REDACTED] affidavit is also inconsistent with the timeline provided by the applicant, which indicates that her father was living in the United States between 1952 and 1961. Based on these discrepancies, the AAO will discount the two affidavits and the timeline provided by the applicant. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The affidavit prepared by [REDACTED] mother states that he lived in with his parents on [REDACTED] near Edinburg, Texas from 1944 until 1947/48; i.e., from the time he was approximately two years of age until he was five or six. However, in the absence of any documentary evidence related to [REDACTED] residence in the United States when he was a child, a single affidavit is insufficient to establish that he was physically present in the United States for the time period claimed. Further, even if the AAO were to accept the affidavit, it would establish only four of the ten years of physical presence required by section 301(a)(7) of the 1952 Act.

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

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.