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U.S. Citizenship
and Immigration
Services

IE 2



FILE:



Office: SAN FRANCISCO, CA

Date: SEP 13 2006

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(a)(7).

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

that the applicant was born on September 15, 1967, in Mexico. The applicant's father, now deceased, was born on May 6, 1944 in Mexico. On January 28, 1958, [REDACTED] was found to have acquired U.S. citizenship through his mother, [REDACTED] who was born in El Paso, Texas on March 10, 1925. The applicant's mother, [REDACTED] was at the time of his birth, a citizen of Mexico and remains a citizen of that country. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the Immigration and Nationality Act of 1952 (1952 Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his 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 September 15, 1967. Therefore, as asserted by the applicant, he must establish his claim to U.S. citizenship under section 301(a)(7) of the 1952 Act, the applicable immigration statute in effect in 1967.

While counsel, on appeal, notes that the applicant has satisfied the citizenship retention requirements included in section 301(a)(7) of the 1952 Act, the AAO will not address this issue. Individuals born to a U.S. citizen parent and a noncitizen parent after October 10 1952 are not subject to the retention requirements set forth in the 1952 Act. Accordingly, the only issue before the AAO is whether the record establishes that the applicant has acquired U.S. citizenship through his father.

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 his father was a U.S. citizen at the time of his birth and that his father met the physical presence requirements set forth above prior to the applicant's 1967 birth.

Based on the evidence of record, the district director concluded that the applicant had failed to establish that his U.S. citizen father had resided in the United States for ten years prior to his birth, as required by section 301(a)(7) of the 1952 Act. The application was denied accordingly.

The record contains the following evidence relating to the U.S. citizenship and residence of the applicant's father:

- A May 12, 1980 statement from a vice consul at the U.S. consulate in Ciudad Juarez, Mexico indicating that the applicant's father was then registered at the consulate as a U.S. citizen. The vice consul stated that on January 22, 1958, the Department of State had determined [REDACTED] to have acquired U.S. citizenship by birth abroad to a U.S. citizen mother. **He reported that [REDACTED]**

last "Card of Identity and Registration" was to expire on January 12, 1983

- An "Itemized Statement of Earnings" for [REDACTED] issued by the Social Security Administration for the period January 1956 through December 1985. The earnings statement shows U.S. income for [REDACTED] for the relevant years of 1960 and 1963-1967.
- An affidavit from the applicant's mother, [REDACTED], attesting that she met her husband in 1957 when his family lived in San Elizario, Texas. She states that between 1957 and 1963, when they married, [REDACTED] lived and worked in the United States, including Arizona, California and Texas. Two photographs, which include [REDACTED] are appended to the affidavit. The applicant's mother indicates that both were taken in San Elizario, Texas, one prior to her 1963 marriage to her husband and the other after the birth of the second of her children in 1965.
- A February 11, 2006 letter from the Social Security Administration regarding [REDACTED] mother, [REDACTED]. The letter states that SSA records show only a single 1956 report of earnings in her name. It also indicates that [REDACTED] applied for a social security number in February 1956 and submitted three requests for social security replacement cards in 1971 and 1976. Microfilm copies of the 1956 application and replacement requests are included in the record.
- Affidavits from two of [REDACTED] siblings, [REDACTED] and [REDACTED] stating that he worked in agriculture in Texas and California from approximately 1958 through 1963 and one from his brother-in-law and former coworker, [REDACTED] attesting to his U.S. employment from 1959 through 1963.
- An April 12, 2005 declaration signed by the applicant stating his understanding that his father lived with his grandmother when she lived and worked as a housekeeper and that he was, therefore, physically present in the United States for "not less than ten years, at least five of which were after attaining the age [of] 14 years."

While the AAO finds the documentation submitted by the applicant to demonstrate that at the time of his birth, his father was a U.S. citizen, it does not find him to have provided sufficient evidence to establish that prior to his 1967 birth his father had resided in the United States for the ten-year period required by section 301(a)(7) of the 1952 Act.

The SSA earnings statement submitted by the petitioner documents that his father worked in the United States in 1960 and during the period 1963-1967, a total of approximately of six years. It is the only primary evidence provided by the applicant to establish [REDACTED] physical presence in the United States. While the AAO notes that SSA records indicate that [REDACTED] mother applied for a social security number in

1956 and earned \$54.60 in U.S. income during this same year, her presence in the United States during 1956 does not constitute proof that her son was with her at that time.

The affidavits prepared by [REDACTED] siblings and brother-in-law, and the letter and photographs from his widow fail to establish that [REDACTED] was physically present in the United States from 1957/58 to 1963. While these statements assert that he lived and worked in the United States during this time period, the AAO notes that the SSA earnings statement for [REDACTED] which covers the period from January 1956 through December 1985, reports no income for the years 1958 and 1959 or 1961 and 1962. While the AAO acknowledges counsel's statement on appeal that it was "not unusual for young laborers such as [REDACTED] to be paid 'under the table,'" the submitted statements do not carry sufficient evidentiary weight to overcome the lack of any primary evidence regarding [REDACTED] U.S. employment prior to 1960 and during 1961 and 1962. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without any type of corroborating evidence – e.g., school, church, medical or tax records, correspondence, or pay stubs/receipts – that would place the applicant's father in the United States prior to 1960 and during 1961-1962 period, the statements submitted by [REDACTED] family are insufficient proof of his physical presence in the United States.

On appeal, counsel contends that the Department of State's certification of the applicant's father as a U.S. citizen establishes his residence in the United States for a five-year period between 1957 and 1965. Counsel asserts that in acquiring U.S. citizenship under section 205 of the Nationality Act of 1940 (1940 Act), the applicant's father was subsequently required to meet the residency requirements of section 201(g) of that Act, which, in pertinent part, state:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: **Provided, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years:** *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease. [Emphasis added].

Accordingly, counsel asserts that to have retained the U.S. citizenship he acquired under section 205 of the 1940 Act, the applicant's father would have been required to live in the United States for a total of five years between May 6, 1957, his 13th birthday, and May 6, 1965, his 21st birthday.

Section 205 of the 1940 Act, the section of law under which the Department of State found the applicant's father to qualify for U.S. citizenship, addresses only the acquisition of citizenship by children born out of wedlock. Although counsel contends on appeal that the applicant's father was not born out of wedlock, that his parents were married at the time of his birth, the May 12, 1980 statement from the U.S. vice consul indicates that the applicant's father acquired U.S. citizenship as an out of wedlock child born to a U.S. citizen mother. The language of section 205 of the 1940 Act states the following regarding out of wedlock births:

The provisions of section 201, subsections (c), (d), (e), and (g) . . . apply, as of the date of birth, to a child born out-of-wedlock, provide[d] the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

As noted in the May 12, 1980 letter from the U.S. vice consul, it is the second paragraph of section 205 under which the applicant's father acquired U.S. citizenship, not the first. The residency requirements of section 201(g) of the 1952 Act referenced in the first paragraph of section 205, which relate to out of wedlock births to U.S. citizen fathers, do not apply to a U.S. citizen mother or to the out of wedlock child born to her.¹ The only residency requirement imposed by section 205 on a U.S. citizen mother is that she have resided in the United States for an unspecified period at some point prior to her child's birth. There is no residency requirement for her child to retain citizenship. Accordingly, the U.S. citizenship held by the applicant's father was not dependent on his residence in the United States for a period of five years between 1957 and 1965, and, therefore, does not establish that residence.

Based on the record before it, the AAO finds insufficient evidence to conclude that the applicant's U.S. citizen father was physically present in the United States for a total period of ten years prior to the applicant's 1967 birth. The evidence demonstrates only that the [REDACTED] was present in the United States in 1960 and from 1963-1967, a total of no more than six years. Accordingly, the applicant has not established that he acquired U.S. citizenship at birth from his U.S. citizen father under section 301(a)(7) of the 1952 Act.

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 failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Counsel cites the findings of *Ablang v. Reno*, 52 F.3d 801, 803 (9th Cir. 1995) in her discussion of the residency requirements imposed by section 205 of the 1940 Act. However, the issues before the court in *Ablang v. Reno* relate to the requirements of the first paragraph of section 205, which address children born out of wedlock to a U.S. citizen father and a noncitizen mother. In the instant case, the applicant's father acquired citizenship from a U.S. citizen mother under the second paragraph of section 205 and is not subject to a residency requirement. As noted by the court in its decision, "[a] child born abroad and out of wedlock to a United States citizen mother and alien father is deemed a United States citizen provided the mother has met the residency requirement; nothing further is required of the child."