U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: HARLINGEN, TX DATE: DEC 11 2007

IN RE: APPLICANT: [redacted]

APPLICATION: Application for Certificate of Citizenship.

ON BEHALF OF APPLICANT:

[redacted]

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

The applicant's Form N-600, Application for Certificate of Citizenship (N-600 application) was denied by the district director without adjudication on December 13, 2005, on the basis that the applicant was removed to Mexico two days after he filed his Form N-600 application, and the Harlingen, Texas district office no longer had jurisdiction over his citizenship application. The district director noted that the U.S. Department of State has jurisdiction over U.S. citizenship claims made abroad, and the district director suggested that the applicant contact the nearest U.S. Consulate or Embassy if he wished to further pursue his U.S. citizenship claim.

On appeal, the applicant asserts through counsel that 8 C.F.R. § 341.1 et. seq. provides that jurisdiction over an application for a certificate of citizenship vests at the time of filing the application. The applicant indicates that his place of residence after filing an N-600 application is thus not relevant to the district director's authority to adjudicate his application. The applicant indicates further that the district director unreasonably delayed the adjudication of his application, and that his constitutional due process rights were violated by the district director's failure to address the merits of his citizenship claim in a timely manner. The applicant asserts through counsel, that both of his parents were U.S. citizens at birth, and that he thus acquired U.S. citizenship at birth pursuant to section 301(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c).

The AAO notes first that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See* 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also, Fraga v. Smith,* 607 F.Supp. 517 (U.S. Dist. Ct. Or. 1985) (relating to federal court jurisdiction over such claims.) The AAO will therefore not address the applicant's due process violation assertions.

The regulation provides in pertinent part at 8 C.F.R. § 341.1 that:

> [A]n application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) or to have acquired or derived United States citizenship as specified in section 341 of the Act shall be submitted on Form N - 600 in accordance with the instructions thereon, accompanied by the fee specified in Sec. 103.7(b)(1) of this chapter. . . .

The Form N-600 application states in its instructions that the application must be submitted to the CIS field office with jurisdiction over the applicant's place of residence. The Form N-600 application contains no provision stating that an applicant must remain in the jurisdiction of the CIS field office in order for the CIS field office to retain jurisdiction to adjudicate the Form N-600 application.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) defines the term, "residence" as, "[t]he place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

In the present matter, the record reflects that the applicant was convicted of Indecency with a Child in February 2001. The applicant was sentenced to confinement in jail in Texas for a period of three years. An

Immigration and Naturalization Service Warrant for Arrest authorizing the detention of the applicant was issued on January 29, 2001, and an Immigration Judge ordered the applicant removed on December 15, 2001. The record indicates that the applicant was in custody, or detained in Texas when the Board of Immigration Appeals denied the appeal of his removal decision on February 27, 2002, and at the time he filed his February 18, 2004, Form N-600 application, and Request for Stay of Removal. The applicant was removed to Mexico on February 20, 2004.

Based upon a review of the evidence in the record, the AAO finds that the applicant's "principal, actual dwelling place in fact, without regard to intent," was in Texas when he filed his Form N-600 application. The CIS office in Harlingen, Texas thus had jurisdiction over the applicant's Form N-600 application at the time of filing.

The stated jurisdictional requirement for filing a Form N-600 application is simply that the Form N-600 application must be submitted to the CIS field office with jurisdiction over the applicant's place of residence. The Form N-600 application contains no provision stating that an applicant must remain in the jurisdiction of the CIS field office in order for the office to retain jurisdiction to adjudicate the Form N-600 application.[1] The record reflects that the applicant resided within the jurisdiction of the Harlingen, Texas, CIS office when he submitted his Form N-600 application. Absent clear regulatory or statutory authority to the contrary, the AAO thus finds that the CIS office in Harlingen, Texas retained jurisdiction to adjudicate the applicant's properly filed Form N-600 application.

In the present matter, the district director erroneously failed to adjudicate the applicant's U.S. citizenship claim. The AAO notes, however, that it conducts the final administrative review and enters the ultimate decision for CIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny or approve an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. *See Helvering v. Gowran,* 302 U.S. 238, 245-46 (1937); *see also, Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003). The AAO will therefore review the evidence contained in the record and make a final determination on the merits of the applicant's U.S. citizenship claim.

Through counsel, the applicant asserts that both of his parents were U.S. citizens at birth, and that he acquired U.S. citizenship pursuant to section 301(a)(3) of the former Act, 8 U.S.C. 1401(a)(3) (now section 301(c) of the Act), which provided that a person born outside of the United States or its outlying possessions, of parents both of whom are citizens, is a U.S. citizen at birth if one of the parents had a residence in the United States or one of its outlying possessions prior to the person's birth.

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[1] It is noted that a change of address may result in the transfer of jurisdiction over an application, to a new CIS office's jurisdiction (for example, upon the filing of a Form A-11, Change of Address.) In the present matter however, the applicant's new address is in Mexico. As noted in the district director's decision, the U.S. Department of State, not CIS, has jurisdiction over U.S. citizenship applications made overseas. Continuing CIS jurisdiction over the applicant's Form N-600 application can therefore not be transferred to a CIS office in the applicant's new place of residence.

The present record contains a copy of the applicant's mother's Certificate of Citizenship reflecting that she was a U.S. citizen at birth. Accordingly, the applicant has established that one of his parents was a U.S. citizen at the time of his birth. The record contains a copy of the applicant's father's Certificate of Naturalization, reflecting that the applicant's father became a naturalized U.S. citizen on July 13, 1998, when the applicant was 32-years old. The record does not contain a Certificate of Citizenship for the applicant's father, and the applicant indicates, through counsel, that his father did not apply for, or obtain a certificate of citizenship. Nevertheless, the applicant indicates that his paternal grandfather [redacted] was a native-born U.S. citizen, and that his father [redacted] acquired U.S. citizenship at birth pursuant to citizenship provisions contained in section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934. On this basis, the applicant asserts that both of his parents were U.S. citizens at the time of his birth.

The AAO finds that State of Texas, Delayed Certificate of Birth evidence contained in the record establishes that the applicant's paternal grandfather was born in La Paloma, Texas on January 1, 1914. The applicant has therefore established that his paternal grandfather was a U.S. citizen.

"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." *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). Birth certificate evidence contained in the record reflects that the applicant's father was born in Mexico on May 26, 1940. The requirements contained in section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, therefore apply to the applicant's father's transmission of citizenship claim.

Section 1993 of the Revised Statutes, as originally enacted, applies to children born abroad to U.S. citizens prior to May 24, 1934, and states that:

> All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, applies to children born abroad to a U.S. citizen father between May 24, 1934 and January 13, 1941. The amendment made by the Act of May 24, 1934, did not change the original requirements set forth in section 1993 of the Revised Statutes. The Act of May 24, 1934 did, however, amend section 1993 of the Revised Statutes to include a requirement that the child of a U.S. citizen must reside in the United States for five years prior to reaching the age of eighteen, and must take an oath of allegiance within six months of his or her twenty-first birthday, in order to acquire U.S. citizenship (retention of citizenship requirements.) It is noted that U.S. laws passed subsequent to the passage of the Act of May 24, 1934, retroactively liberalized the Act of May 24, 1934, retention of citizenship requirements. The Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137, retroactively liberalized the child retention requirements to state that a child must reside in the U.S. or its outlying possessions for five years between the ages of thirteen and twenty-one. *See* section 201(g) of the Nationality Act. The Immigration and Nationality Act of June 27, 1952, Pub. L. 82-414, 66 Stat. 163 (the former Act), retroactively liberalized retention requirements further to allow a child to meet the requirements if she or he was continuously physically present in the United States or its outlying possession for five years between the ages of fourteen and twenty-eight. *See* section 301(c) of the former Act.

The AAO finds that Certificate of Baptism and affidavit evidence contained in the record establish that the applicant's paternal grandfather met the U.S. residence requirement set forth in section 1993 of the Revised Statutes, as amended by the Act of May 24, 1943. The AAO finds, however, that the applicant failed to establish that his father met retention of citizenship requirements.

The regulation states at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec.77 (Comm. 1989).

The evidence relating to the applicant's father's (Mr. [redacted] residence or physical presence in a United States consists solely of Mr. [redacted]'s Certificate of Naturalization, issued in McAllen, Texas on July 13, 1998. The record contains no other evidence to demonstrate or establish Mr. [redacted] residence or physical presence in the United States. The AAO finds, upon review of the evidence, that the applicant failed to establish by a preponderance of the evidence that his father resided in the United States, or was continuously physically present in the United States for any of the time periods discussed in the retention of citizenship requirements above. Accordingly, the applicant failed to establish, by a preponderance of the evidence that his father acquired U.S. citizenship at birth through the applicant's paternal grandfather.

Because certificate of citizenship evidence contained in the record establishes that the applicant's mother, [redacted], was a U.S. citizen at birth, the applicant's U.S. citizenship claim will be analyzed under citizenship provisions relating to the transmission of citizenship at birth, when one parent is a U.S. citizen.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), in effect when the applicant was born, 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 and its outlying possessions 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 or its outlying possessions 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 record contains the following evidence relating to the applicant's mother's (Mrs. [redacted]) physical presence in the United States between her date of birth on June 13, 1940, and the applicant's birth on May 1, 1966:

> An affidavit signed by [redacted] on February 1, 2006, stating in pertinent part that she has lived in Weslaco, Texas for thirty-two years, that she is married to Mrs. [redacted] cousin, and that she is aware that Mrs. [redacted] lived and worked in Brownsville, Texas when she was approximately fifteen or sixteen years of age (in 1955 or 1956). The affiant states that Mrs. [redacted] worked in Brownsville, Texas for at least six or seven years, and that Mrs. [redacted] resided with a family and cared for the family's children in Brownsville, Texas.

The record contains no other evidence relating to Mrs. [redacted] physical presence in the United States or its outlying possessions between June 13, 1940 and May 1, 1966.

The AAO notes that the record contains no evidence to corroborate the statements made in [redacted]' affidavit. The AAO notes further that, at best, the statements made in the affidavit establish only that Mrs. Buenrostro was physically present in the United States for seven years prior to the applicant's birth. Accordingly, the AAO finds that the applicant failed to establish by a preponderance of the evidence that his mother was physically present in the United States or its outlying possession for ten years prior to his birth, as required by section 301(a)(7) of the former Act.

The burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). The AAO finds that the applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.