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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: DEC 20 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on September 24, 1977 in Mexico. The applicant's mother, [redacted] was born on May 12, 1947 in Mexico, but she acquired U.S. citizenship at birth. The applicant's father, [redacted] was at the time of his birth, a citizen of Mexico and, based on the applicant's Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents were married in Brownsville, Texas on September 2, 1970. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his mother.

The director denied the Form N-600 based on his determination that the record did not establish that the applicant's mother had met the physical presence requirements of section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7). On appeal, the applicant, through counsel, maintains that the record shows that his mother was physically present in the United States as required. In support of his appeal, the applicant submits a new affidavit executed by his mother purporting to explain the inconsistencies in her previous affidavit as identified by the district director in his denial.

"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 the present matter was born in 1977. Section 301(a)(7) of the former Act therefore applies to the present case.

Section 301(a)(7) of the former Act states 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The applicant must thus establish that his mother was physically present in the United States for at least ten years prior to September 24, 1977 (the applicant's date of birth), at least five of which were after May 12, 1961 (applicant's mother's 14th birthday).

The record includes the certificate of citizenship issued to the applicant's mother on May 31, 1966, which establishes her U.S. citizenship as of the date of her birth. The record also contains a copy of the applicant's parents' marriage certificate, the applicant's birth certificate, a social security earnings statement, and two declarations by the applicant's mother. Additionally, the applicant submitted photographs of a home in support of his mother's claim that she resided in Brownsville.

The Board of Immigration Appeals found in *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 331 (BIA 1969), that:

> [W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The AAO notes that the only relevant evidence submitted relating to the applicant's mother's physical presence in the United States is her declarations and the social security statement. The AAO notes that undated, unauthenticated photographs of a home are not evidence of the applicant's mother's residence therein. The discrepancies between the applicant's mother's declarations and her Form N-600, as well as the applicant's own Form N-600, cannot be overlooked. The AAO notes that the applicant's mother's most recent declaration provides more detail than her previous affidavits. Nevertheless, the AAO notes that, although the recent declaration appears to be prepared in direct response to the concerns identified by the district director, the inconsistencies between her statements and the previously submitted testimony remain unexplained. For example, the applicant's mother states in her first declaration that she lived with her cousin [redacted] from 1960 until 1970, and worked for her until the applicant was born. Her recent declaration, however, states that she worked for her cousin until 1969 and then with her brother in "la labor" in Indiana. Her second declaration further states that she "moved back" to Mexico soon after her marriage in 1970. She also states, however, that for the six months it took for her husband to legalize his status, she "continued working for [redacted] in Brownsville" and that once he obtained lawful status, they "continued living in the U.S." but "never had a home together." The AAO notes that, in response to the director's concern regarding the applicant's mother's residence at the time of her application for a certificate of citizenship in 1966, the applicant's mother states in her recent declaration that her cousin told her she needed to live in Mexico to be eligible to apply. The applicant's mother further claims in her recent declaration that she resided in the United States from 1970 to 1977 and that she only traveled to Mexico to give birth to the applicant. The AAO finds that whereabouts of the applicant between 1969 and 1977 are unclear at best.

The AAO is also not persuaded by counsel's contention that the notation "resides in Mexico" in the applicant's mother's Form N-600 means something other than that the applicant's mother's was residing in Mexico at the time of her application. The AAO further finds no corroborating evidence in the record in support of the applicant's mother's claim that she was present in the United States starting in 1956. In this regard, the AAO notes that the social security statement only reflects earnings in 1968, and then starting in 1980. The AAO further notes that in the earlier Table of Physical Presence submitted by the applicant he notes that his mother resided in Brownsville from 1961 to 1970, and then Monterrey, Mexico starting in 1971, whereas later submissions indicate that she lived in Brownsville from 1961 to 1977.

The AAO finds that the applicant's mother was physically present in the United States at some point prior to the applicant's birth in 1977, as is evidenced by her marriage in Brownsville in 1970 and the issuance of her certificate of citizenship in 1966. The AAO must conclude, however, that the applicant has failed to establish

by a preponderance of the evidence that his mother was physically present in the United States for 10 years prior to 1977, five of which were after her 14th birthday in 1961.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant." *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Affidavits alone may serve as sufficient evidence to show a fact by a preponderance of the evidence when they are detailed and consistent. The AAO decisions listed by counsel in Exhibit D to the Applicant's Appellate Brief demonstrate that an applicant may establish eligibility by providing clear, consistent and detailed affidavits. The applicant in this case, however, has only provided declarations by his mother, and the statements in the declarations are unclear and inconsistent. In fact, there are important inconsistencies in the applicant's mother's statements, especially when compared to previous testimony and contemporaneous information. Therefore, the applicant has failed to meet his burden of proof to establish that his mother met the physical presence requirement of section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7). His appeal will be dismissed.

ORDER: The appeal is dismissed.