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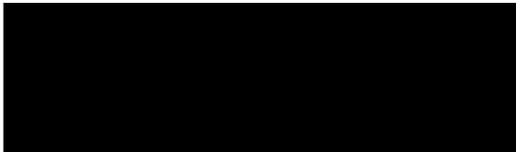
FILE: [REDACTED] Office: HARLINGEN, TX

Date: FEB 02 2007

IN RE: Applicant: [REDACTED]

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, 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 October 18, 1958 in Mexico. The applicant's mother, [REDACTED] was born in Texas on February 19, 1920, and she is a United States citizen. The applicant does not assert, and the record does not reflect, that his father was a U.S. citizen. The record reflects that the applicant's parents were married in Mexico on October 3, 1936. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found that, based on the evidence in the record, the applicant failed to establish that his mother resided in the United States for ten years prior to the applicant's birth, at least five of which occurred after her fourteenth birthday, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, counsel for the applicant states that the record contains sufficient evidence to show that the applicant's mother met the residency requirement of section 301(a)(7) of the former Act. *Statement from Counsel on Form I-290B*, dated April 20, 2006.

The record contains a brief from counsel; a copy of the applicant's birth certificate; a copy of the applicant's mother's birth certificate; a record of the applicant's mother's baptism; copies of the applicant's mother's identification documents; a copy of the applicant's mother's death certificate; a copy of the applicant's parents' marriage certificate; an affidavit from the applicant's mother's sister (the applicant's aunt), and; an affidavit from a member of a household for which the applicant's mother worked. The entire record was reviewed and considered in rendering this decision.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

"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 in 1958. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.

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

Upon review, the applicant has not submitted sufficient evidence to establish that his mother was physically present in the United States for a period or periods totaling ten years, at least five of which were after she attained the age of fourteen years. Section 307(a)(7) of the former Act.

The applicant's mother's birth certificate reflects that she was born in Texas on February 19, 1920. Her baptismal certificate reflects that she was baptized in Texas on May 30, 1920, when she was approximately three and one half months old. The two documents suggest that the applicant's mother was present in the United States for three and one half months.

The applicant presented a marriage certificate for his parents that reflects that they married in Mexico on October 3, 1936. Thus, this certificate shows that the applicant's mother was out of the United States on that date.

The applicant's aunt stated that in 1930 her parents (the applicant's mother's parents) took her and the applicant's mother to live in Mexico. *Statement from* [REDACTED] dated February 22, 2006. However, she did not clearly indicate where she and the applicant's mother were residing prior to moving to Mexico. She stated that she returned to the United States to live with her aunt in San Juan, Texas, and that the applicant's mother would come to the United States from Mexico every year to work on farms in Indiana and Michigan. *Id.* However, she did not state the duration of time the applicant's mother stayed in the United States on each visit. The applicant's aunt provided that the applicant's mother resided in the United States from January or February 1954 until 1958, and then she returned to Mexico. *Id.* Thus, the applicant's aunt accounted for approximately four years of the applicant's mother's residence in the United States, from 1954 to 1958, and she described an undetermined period of time in which the applicant's mother made trips to the United States. Accordingly, the applicant's aunt's statement is not sufficient to show that the applicant's mother accrued ten years of presence in the United States prior to the applicant's birth, as required by section 307(a)(7) of the former Act.

In an affidavit from [REDACTED] he stated that the applicant's mother worked in his parents' household starting in 1941. *Statement from* [REDACTED] dated February 22, 2006. He indicated that the applicant's mother lived in his house and occasionally traveled to Mexico to visit her family. *Id.* He stated that the applicant's mother lived with his family for "a couple of years" until the middle of 1943, and again for "a couple of years" beginning in approximately 1950 or 1951. *Id.* He provided that the applicant's mother resided in his parents' household from 1954 to 1958, after which she returned to Mexico to deliver her baby. *Id.* Thus, Mr. [REDACTED] accounted for two periods of residence of approximately two years, and one period of approximately four years, totaling approximately eight years.

The affidavit from the applicant's aunt and Mr. [REDACTED] are consistent with each other, and internally consistent. Yet, collectively they only clearly address eight years of the applicant's mother's residence in the United States prior to the applicant's birth. It is further noted that each affidavit is brief and lacks sufficient detail to show the applicant's mother's presence during the described periods by a preponderance.

Counsel provides a summary of the applicant's mother's presence in the United States. Counsel indicates that the applicant's aunt was born in the United States in 1924. Counsel suggests that this fact shows that the applicant's mother was in the United States from the time of her birth in 1920 until her sister's birth in 1924. However, the records contains no evidence of the applicant's aunt's birth, such as her birth certificate. Nor does the record contain evidence or statements to establish that the applicant's mother resided with the

applicant's grandmother at the time of the applicant's aunt's birth in 1924. Counsel indicates that the applicant's mother remained in the United States until 1930, and that this fact is supported by the applicant's aunt's affidavit in which she stated that the applicant's mother's parents took her to live in Mexico in 1930. However, as noted above, the applicant's aunt did not clearly indicate whether the applicant's mother was residing in the United States prior to the time her parents took her to Mexico. Thus, counsel's timeline is not supported by adequate evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the foregoing, the applicant has not shown that his mother was physically present in the United States for a period or periods totaling ten years, at least five of which were after she attained the age of fourteen years. Section 307(a)(7) of the former Act. For this reason, the application may not be approved.¹

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant failed to establish by a preponderance of the evidence that satisfies the requirements of section 307(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ It is noted that the present application fails for a lack of evidence. The record does not affirmatively indicate that the applicant is ineligible for a certificate of citizenship. The dismissal of this appeal is without prejudice to the applicant, and he may file a new Form N-600 with additional evidence if he feels he may meet the requirements of section 307(a)(7) of the former Act.