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U.S. Citizenship
and Immigration
Services

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FILE: OFFICE: HARLINGEN, TEXAS Date: JAN 26 2007

IN RE: APPLICANT:



APPLICATION: Application for Certificate of Citizenship under section 301 of the former Immigration and Nationality Act, 8 U.S.C. § 1401

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 black ink, 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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on May 15, 1975. The applicant's father, [REDACTED] was born in Mexico on August 25, 1952, and he has been recognized as a U.S. citizen from birth. The applicant does not assert, and the record does not support, that his mother, [REDACTED] is a U.S. citizen. The record reflects that the applicant's parents were married on August 25, 1974. The applicant seeks a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded that the applicant failed to establish that his father was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant asserts that he submitted sufficient evidence of his father's presence in the United States, and thus the application should be approved. *Statement from the Applicant on Form I-290B*, dated July 26, 2005.

"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 1975. 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 district director concluded that the applicant failed to establish that his father 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," as required by section 301(a)(7) of the former Act. The district director noted that the applicant submitted affidavits from individuals who allegedly have an awareness of the applicant's father's presence in the United States, but that the applicant failed to provide other documentation to corroborate the claims in the affidavits. The district director noted that Citizenship and Immigration Services (CIS) requested that the applicant provide additional evidence of his father's presence, yet the applicant failed to respond within the 120-day period given.

Upon review, the applicant has not provided sufficient evidence to show that his father was present in the United States for at least ten years prior to the applicant's birth, at least five of which were after the

applicant's father reached 14 years of age. *See* section 301(a)(7) of the former Act. As evidence of his father's presence in the United States, the applicant submitted two brief affidavits, from his father's cousin and his father's uncle.

The applicant's father's cousin and uncle both state that they were aware that the applicant's father came to the United States at age 13, and that he assisted the applicant's grandfather with a construction business. *Affidavits from [REDACTED] and [REDACTED] dated November 15, 2004.* However, both of these affidavits are very brief and lack sufficient detail to show the applicant's father's continued presence in the United States. For example, they do not state whether or how long the applicant's father remained in the United States after he arrived at age 13. The applicant's father's uncle stated that the applicant's father married in 1942, but he did not indicate where this event occurred or where the applicant's father was residing at the time. As the applicant's father was married in [REDACTED] Mexico, the record suggests that he was not residing in the United States at the time.

The applicant further submitted affidavits from his mother's uncle and two of his father's friends indicating that they have known the applicant's father since 1977 when he arrived in Victoria, Texas. *Affidavits from [REDACTED] and [REDACTED] dated October 15 and 16, 2004.* However, as the applicant was born in 1975, these affidavits do not serve as evidence of the applicant's father's presence in the United States prior to the applicant's birth.

The applicant provided copies of numerous other documents relating to his father's presence in the United States, such as tax records and pay stubs. However, these documents are dated after the applicant's birth, thus they do not serve as evidence of his father's presence prior to his birth as contemplated by section 301(a)(7) of the former Act.

Based on the foregoing, as found by the district director, the affidavits submitted by the applicant do not serve as adequate evidence to show that his father was present in the United States for at least ten years prior to the applicant's birth, at least five of which were after the applicant's father reached 14 years of age. *See* section 301(a)(7) of the former Act. Thus, the applicant has not established that he meets the requirements of section 301(a)(7) of the former Act. For this reason, the applicant may not be approved.

It is noted that nothing in the record contradicts the affidavits submitted by the applicant. The present application fails for a lack of evidence. The denial of the applicant's Form N-600 application is without prejudice. He may submit a new application with additional evidence of his father's presence in the United States if he feels he may meet the requirements of section 301(a)(7) of the former Act.

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 applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.