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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: HARLINGEN, TEXAS

Date: **JUL 27 2007**

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.

A handwritten signature in cursive script, 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 15, 1972, in Tamaulipas, Mexico. The applicant's father, [REDACTED], was born in Mexico on October 19, 1937. The applicant's father acquired U.S. citizenship at birth, as evidenced by Certificate of Citizenship No. [REDACTED]. The applicant's mother, [REDACTED] is a native and citizen of Mexico. The applicant's parents were married on June 26, 1971.

The district director concluded that the applicant had failed to establish eligibility for a certificate of citizenship upon finding a note in the applicant's father's administrative file contradicting the statements made in the affidavits submitted in support of the applicant's claim. The application was denied accordingly.

On appeal, the applicant contends that the district director erred in giving more weight to a note in her father's file than to the affidavits submitted. The applicant further states that the district director should have interviewed her mother and given her an opportunity to provide an explanation for the apparent inconsistency.

The AAO notes that "[t]he 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 was born on April 15, 1972. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to her citizenship claim.

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.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to April 1972, five of which after October 1951 (when her father turned 14 years old). In support of her citizenship claim, in lieu of documentary evidence, the applicant submitted affidavits executed by her mother [REDACTED], her father's cousin [REDACTED], her father's employer [REDACTED], and the son of her father's other employer [REDACTED]. The record also contains two letters by [REDACTED] and [REDACTED] certifying the applicant's father's employment, a copy of the applicant's father's Certificate of Citizenship (issued in 1971), his Application for Certificate of Citizenship (submitted in 1971), the applicant's birth certificate and her parent's marriage certificate.

The affidavits submitted by the applicant indicate that the applicant's father worked in the United States from 1957 to 1977. The AAO notes that [REDACTED] certifies that the applicant's father worked for him from 1969 to 1977, while his affidavit appears to indicate that the applicant's father worked for him starting in 1967. The applicant's father's Certificate of Citizenship and Application for Certificate of Citizenship indicate that the applicant was residing in Mexico prior to 1971. The applicant's mother explains that her husband, the applicant's father, worked in the United States from 1968 until 1984. See Affidavit of [REDACTED]

[REDACTED] The applicant's mother maintains that her husband worked in the United States during the week and returned to Mexico most weekends. *Id.* She further explains that he may have stated that he was residing in Mexico when he applied for a citizenship certificate, thinking that telling the truth would prejudice his application. *Id.*

The AAO notes that there are some inconsistencies with respect to dates in the affidavits submitted by the applicant. The AAO further notes that there is no documentary evidence in the record corroborating the applicant's claim that her father resided in the United States for the requisite period of time, nor is there any evidence to contradict the statements made by her father in 1971 when he applied for his Certificate of Citizenship and indicated he had been residing in Mexico.

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). 8 C.F.R. § 341.2(c) provides that 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).

The AAO further notes the Board of Immigration Appeals finding 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 finds that the affidavits submitted by the applicant do not establish her father's physical presence in the United States for the requisite period before 1972. The AAO cannot give more weight to the affidavits submitted in the face of contemporaneous contradictory statements made in connection with the applicant's father's Application for Certificate of Citizenship. The AAO is not persuaded by the applicant's mother explanation that the applicant's father misrepresented his residency in 1971. The AAO further notes that there are some discrepancies in the affidavits submitted, and that the applicant has not established the unavailability of any documentary evidence to corroborate her claim. The AAO thus finds that the applicant has not met her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.