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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: JUN 05 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 of the Revised Statues of the United States, 1878, as amended

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 District Director, Harlingen, Texas denied the application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The applicant filed a writ of habeus corpus and complaint for declaratory relief in the U.S. District Court for the Southern District of Texas. *Maria Judit Gonzalez-Gonzalez v. Alfonso de Leon, et al,* CV-06-017 (RC) (filed January 20, 2006). On March 1, 2007, the Court entered an order vacating the AAO's dismissal and remanding the application for further consideration consistent with its findings. In response, the AAO will reopen the matter. The AAO will affirm its prior decision denying the application.

As framed by the Court, the issue before the AAO is whether the evidence submitted by the applicant, in the absence of a U.S. birth certificate, establishes that the applicant's father was born in the United States. In pleadings before the Court, the applicant's counsel has contended that the applicant has submitted numerous documents to establish her father's U.S. birth and that there is no requirement that proof of U.S. birth be provided in the form of a state-issued document. In reaching a new decision in this matter, the AAO has again reviewed the record in its entirety.

The applicant contends that her father was born on June 24, 1919 in Salineno, Texas and that she is, therefore, eligible for a certificate of citizenship under section 1993 of the Revised Statues of the United States, 1878, as amended . In support of her claim, she has submitted: a Mexican birth certificate from the Municipality of the City of Mier, State of Tamaulipas, Mexico, reflecting that on March 10, 1922, [redacted] registered the birth of his son, [redacted], as having occurred on June 24, 1919 in Rancho del Salineno, Texas; a baptismal certificate indicating that on January 10, 1920, [redacted] born in Salineno, Texas on June 24, 1919, was baptized at the Immaculate Conception Parish in the City of Mier, Tamaulipas, Mexico; a Mexican passport issued to [redacted] in 1970, which reflects that he was born in Salineno, Texas on June 24, 1919; a certificate issued by the Mexican Department of Foreign Affairs on January 19, 1973 certifying that [redacted] is a Mexican by birth but indicating that the birth occurred in Rancho del Salineno, Texas; and affidavits from [redacted] and [redacted], each attesting to the applicant's June 1919 birth in Salineno, Texas.

The record includes no birth record or birth-related documentation issued by the State of Texas or a local government entity in Texas. Instead, an October 27, 2004 letter from the Texas Bureau of Vital Statistics, Department of State Health Services states that a thorough search of their files and indexes have found no record of the birth of the applicant's father.[1]

Counsel contends that the regulation at 8 C.F.R. § 103.2(b)(2) does not preclude Citizenship and Immigration Services (CIS) from considering the evidence of birth provided by the Mexican birth and baptismal certificates, the certificate of Mexican nationality and the Mexican passport issued in relation to the applicant's father. She asserts that neither the general language of the regulation nor the instructions to the Form N-600, Application for Certificate of Citizenship, limit the types of birth certificates that can be used to prove birth in the United States and that the applicant complied with CIS requirements when she submitted a Mexican birth certificate for her father. Counsel's reasoning is not persuasive.

The regulation at 8 C.F.R. § 103.2(b) states in pertinent part:

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[1] The record of evidence reviewed in the applicant's February 24, 2005 appeal of the district director's decision did not include this response, as noted in the AAO's December 19, 2005 dismissal of the appeal.

(1) *General.* An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by *the instructions on the form* [emphasis added].

(2) *Submitting secondary evidence and affidavits* – (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . . Secondary evidence must overcome the unavailability of primary evidence . . . . (ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available . . . .

While the AAO agrees that the above regulatory language does not indicate what documentation must be submitted to establish proof of U.S. birth, specific requirements regarding the submission of birth certificates/records are, contrary to counsel's assertions, set forth in the instructions accompanying the Form N-600. Under the heading, *WHAT DOCUMENTS OR EVIDENCE MUST I SEND WITH THE APPLICATION?,* the instructions state:

> The following is a list of documents that must be submitted with the N-600 if the Service [now CIS] does not already have the document or if the applicant would rather resubmit the document that wait for the retrieval of the [CIS} file. Unless specifically noted otherwise, every applicant must submit each of the documents listed below for himself/herself and the U.S. citizen parent(s) through whom the applicant is claiming U.S. citizenship [emphasis added].
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> . . .
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> - **Birth Certificate or Record** – A certified birth certificate or record issued by a civil authority in the country of birth [emphasis added].
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> . . .
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> - **Proof of U.S. citizenship** – Examples of this are birth certificates showing birth in the United States;[2] an N-550, Certificate of Naturalization; an N-560, Certificate of Citizenship; and FS-240, Report of Birth Abroad of United States Citizen; or a valid unexpired U.S. passport.

When the above documents cannot be obtained, the Form N-600 instructions reflect the language at 8 C.F.R. § 103.2(b)(2)(ii):

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[2] In light of the preceding requirement that a birth record be issued by a civil authority in the country of birth, birth certificates submitted as proof of U.S. citizenship must be U.S. birth certificates.

> If it is not possible to obtain any one of the above-required documents, you must establish why the evidence is not available [emphasis added]. You may be required to submit an original written statement from the relevant government or other authority explaining the reason for the unavailability of the document(s). You may submit . . . **secondary evidence** for consideration. However, secondary documents that do not overcome the unavailability of primary documents may result in denial of the application . . . .

Included within the list of documents identified by the Form N-600 instructions as constituting secondary evidence are baptismal certificates, church records, school records, census records and affidavits.

Accordingly, the instructions that accompany the Form N-600 require the applicant in the present case to provide a U.S. birth record for the father she claims was born in the United States and on whom she bases her claim to citizenship. The AAO notes that Form N-600 documentary requirements also rebut counsel's claim that the applicant was never asked to provide a U.S. birth certificate for her father.

In place of a U.S. birth record for her father, the applicant provides documents issued by several Mexican government entities that identify her father as having been born in Salineno, Texas, as well as affidavits sworn by individuals who attest they have personal knowledge of the time and place of his birth. This evidence does not, however, satisfy the requirement set forth in Form N-600 instructions – submission of a birth record issued by officials in the country of birth. The Mexican government's documentation of the birth of the applicant's father is not, as counsel claims, equivalent to a U.S. birth record for the purposes of establishing a claim to U.S. citizenship. Instead, the documents constitute secondary evidence of his date and place of birth, as do the submitted affidavits.

To comply with Form N-600 instructions, applicants who are unable to provide one of the required documents must establish the reason(s) why the document(s) is unavailable. The record in the present case contains a letter from the Texas Bureau of Vital Statistics that reports it cannot locate a birth record for the applicant's father. However, simple documentation of the unavailability of a record, as provided by the Texas Bureau of Vital Statistics, does not satisfy Form N-600 filing requirements. The letter from the Bureau of Vital Statistics fails to indicate a reason for the absence of a birth record for the applicant's father, e.g., the birth of the applicant's father predates Texas birth records or the records for the year of his birth have been lost, destroyed or are otherwise unavailable. Counsel contends that it is irrational to conclude that the applicant has failed to prove her father was born in the United States because no Texas birth record exists. The AAO notes, however, that birth and death records for the State of Texas date back to 1903[3] and that the applicant's father was born in 1919. The record offers no explanation as to why his birth in Salineno, Texas would not be included in a system of records that predates it by a significant number of years. The AAO also notes that the record does not include a delayed certificate of birth for the applicant's father, a document which is available from the Texas Bureau of Vital Statistics,[4] or indicate that the applicant has attempted to obtain one as proof of her father's U.S. birth. As the applicant has failed to explain why Texas records are unable to offer proof of her father's U.S. birth, the secondary evidence offered by the Mexican documents and affidavits is insufficient to establish it. *See* 8 C.F.R. § 103.2(b)(2); Form N-600 instructions.

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[3] Texas Bureau of Vital Statistics website at http://www.tdh.state.tx/bvs/default.htm.

[4] Letter from the Texas Bureau of Vital Statistics, dated October 27, 2004.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states that the nonexistence of required evidence creates a presumption of ineligibility. As the applicant has not demonstrated any reason(s) why a record of her father's birth cannot be located within the Texas Bureau of Vital Statistics, she has not overcome that presumption and may not establish a claim to U.S. citizenship under section 1993 of the Revised Statutes of the United States, 1878, as amended. Accordingly, the AAO will affirm its prior decision.

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden.

ORDER: The previous decision of the AAO is affirmed.