

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

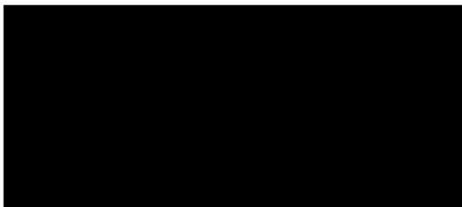
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E 2



FILE:



Office: SAN ANTONIO, TX

Date: **SEP 10 2007**

IN RE:

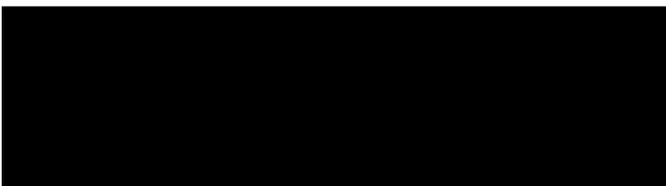
Applicant:



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, San Antonio, Texas and the matter is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The record reflects that the applicant was born on August 11, 1966, in Mexico. The applicant claims that his father, [REDACTED] was born on December 20, 1932 in San Benito, Texas. The applicant's mother, [REDACTED] is a lawful permanent resident and a citizen of Mexico. The applicant seeks to establish that he acquired U.S. citizenship at birth through his father.

"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 on August 11, 1966. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the Immigration and Nationality Act of 1952 (1952 Act), 8 U.S.C. § 1401(a)(7), the applicable immigration statute in effect in 1967.

Section 301(a)(7) of the 1952 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.

The applicant must therefore establish that his father was a U.S. citizen at the time of his birth and that his father met the physical presence requirements set forth above prior to the applicant's 1966 birth.

Based on the evidence of record, the district director concluded that the applicant had failed to establish that [REDACTED] was born in the United States or that he had resided in the United States for ten years prior to the applicant's birth, as required by section 301(a)(7) of the 1952 Act. He denied the application accordingly.

On appeal, counsel contends that the questions raised in the district director's decision about [REDACTED] birth and residence in the United States were resolved in earlier N-600 applications filed by the applicant's siblings. In support of the appeal, counsel submits a brief, as well as new and previously submitted documentation.

The record contains the following evidence relating to the U.S. citizenship and residence of Mr. Garcia:

- A copy of the marriage certificate for the applicant's parents, indicating they were wed on August 29, 1952. The certificate shows that, at the time of his marriage to the applicant's mother, [REDACTED] listed his place of birth as San Benito, Texas.
- A baptismal certificate for [REDACTED] issued on January 25, 2005 by St. Benedict Church in San Benito, Texas, which indicates that he was born in that city on December 20, 1932 and baptized on March 3, 1945. The record also provides copies of the baptismal certificates issued by Texas churches for the following of Mr.

██████████ siblings: ██████████, baptized on March 16, 1932 and ██████████ baptized on May 4, 1935.

- A "Delayed Certificate of Birth," issued by the State of Texas on October 9, 1969, showing ██████████ as having been born on December 20, 1932 in San Benito, Texas. The certificate lists the following as supporting documentation: the 1945 baptismal record for ██████████ from St. Benedict Church; ██████████'s Selective Service Registration Card from 1964; and an affidavit sworn by ██████████. The record also contains copies of delayed Texas birth certificates for the following of ██████████'s siblings: ██████████ born on August 22, 1926 in Mercedes, Texas and Antonio, born on July 7, 1930 in Santa Maria, Texas.
- A Mexican birth certificate for ██████████, filed on June 10, 1950, which states that he was born in Rancho La Puerta, Matamoros, Tamaulipas, Mexico on December 20, 1932.
- A Selective Service System Registration Certificate for ██████████ dated June 10, 1964. The card shows ██████████ place of birth as being San Benito, Texas.
- A statement from the applicant's mother, dated January 28, 2005, as well as statements from ██████████, dated January 18, 2005 and January 28, 2005, and an undated statement from ██████████ submitted on March 8, 2005. ██████████ asserts that he was born in San Benito, Texas and was raised by a woman named ██████████ who lived in La Paloma, Texas. In her statement, the applicant's mother states that following their 1952 marriage, she lived in Mexico and her husband lived in the United States.
- A letter from ██████████ describing himself as ██████████'s employer, dated January 18, 1973.
- A February 10, 2005 affidavit sworn by ██████████ ██████████'s brother, who states that he and ██████████ were both born in Texas. He states that he lived with ██████████ for approximately five years in Mexico, but that from the time that Mr. ██████████ was ten years of age until he was married, he lived with ██████████ in La Paloma, Texas.
- Examiner's Report of Testimony of Witness, Form N-341, dated February 9, 1972, reporting the testimony of ██████████ regarding the U.S. residence of ██████████ and ██████████'s father. ██████████ testified that he knew ██████████'s father in Texas from 1931 until 1937; he also indicated that he met ██████████ in Ohio in 1952 and that from 1952 until 1972 he continued to meet him from time to time.
- A social security earnings statement for ██████████ which reports U.S. income from 1965 to 1996.

- Mexican birth certificates for the applicant's siblings: [REDACTED] born on June 13, 1953; [REDACTED], born on May 20, 1954; Diana, born on March 5, 1958 and [REDACTED] born on August 11, 1960. All certificates indicate that [REDACTED] reported his place of residence as being in Mexico. Mexican birth registrations for [REDACTED] and [REDACTED] indicate their births were registered by [REDACTED]

Based on the record before it, the AAO finds the preponderance of evidence to establish that the applicant's father, [REDACTED], was born in San Benito, Texas on December 20, 1932. Although the AAO notes that on June 10, 1950, [REDACTED] father, [REDACTED], registered his birth as having taken place in Mexico, it finds the earliest documentation of [REDACTED] birth to be the certificate issued at the time of his baptism in 1945. The reliability of this document, which indicates that [REDACTED] was born in San Benito, Texas, is enhanced by the Texas baptismal certificates for two of [REDACTED]'s siblings. The certificate for Mr. [REDACTED]'s brother, [REDACTED], indicates that he was born on July 7, 1930 in Santa Maria, Texas and baptized in Mercedes, Texas on March 16, 1932; that for his sister, [REDACTED], states that she was born in 1934 in Harlingen, Texas and baptized there on May 4, 1935. These two certificates, which are contemporaneous with the date of [REDACTED]'s birth, and [REDACTED] own baptismal certificate offer sufficient evidence to establish that [REDACTED]'s family was, as he claims in his sworn statements, residing in Texas at the time of his birth. Accordingly, the AAO finds the delayed birth certificate issued by the State of Texas, which relies on Mr. [REDACTED] baptismal record, to establish that he was born in the United States. The AAO notes the district director's reference to the limited evidentiary value of baptismal certificates in Texas, but does not find the treatment of a baptismal certificate in the Texas courts to be relevant to the evidentiary weight placed on a baptismal certificate in an N-600 proceeding.

The AAO now turns to a consideration of whether the evidence is sufficient to prove that [REDACTED] was also physically present in the United States for the ten year period required by section 301(a)(7) of the 1952 Act.

The district director did not find the evidence submitted by the applicant to establish that [REDACTED] had lived in the United States for at least ten years prior to the applicant's birth, five of which followed [REDACTED] 14th birthday. The district director concluded that [REDACTED]'s 1952 marriage certificate and the birth certificates for the applicant's older siblings, all of which show his residence as being in Mexico, indicate that his residence in the United States did not begin until 1965, the year in which his social security earnings statement first indicates U.S. income. While the AAO agrees that the documents noted by the district director do indicate [REDACTED]'s residence as being in Mexico, it does not find them to preclude the applicant from establishing that his father was resident in the United States for the required ten year period.

The record establishes that [REDACTED] was born in San Benito, Texas in 1932. Evidence related to Mr. [REDACTED] residence in the United States is provided by: the 1935 certificate issued on the baptism of his sister [REDACTED], [REDACTED]'s own 1945 baptismal certificate, the sworn statement of [REDACTED] who states that he knew [REDACTED]'s father in Texas between 1931 and 1937, and met [REDACTED] again in Ohio in 1952; the sworn statement of [REDACTED]'s brother, [REDACTED], who when asked where [REDACTED] had lived from the age of ten until he married, said that [REDACTED] had lived with [REDACTED] in La Paloma, Texas; statements from the applicant's mother and [REDACTED] regarding [REDACTED] U.S. residence; [REDACTED]'s 1964 registration with the Selective Service Administration and his social security earnings statement.

The record also contains statements from two legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) officers who conducted interviews with [REDACTED] in 1971 and

1972 in connection with the Form N-600s filed by three of the applicant's siblings. The 1971 statement from the first officer notes discrepancies between [REDACTED]'s testimony and that provided by [REDACTED] and concludes that [REDACTED] does not have the U.S. residence to satisfy section 301(a)(7) of the 1952 Act. The statement from the second officer, based on a 1972 interview with [REDACTED] and [REDACTED] concludes that [REDACTED] has lived in the United States since he was born, with brief visits to Mexico beginning in 1952. While the AAO notes both statements, its consideration of the applicant's Form N-600 is limited to the information contained in the present record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). As the present record does not contain the transcripts of the interviews on which these officers based their conclusions, the AAO will not consider their statements in reaching its decision, but rely on the evidence in the record before it.

In his January 28, 2005 statement, [REDACTED] contended that following his mother's death, his father placed him with [REDACTED] in La Paloma, Texas and that he lived with her thereafter. [REDACTED] noted, however, that once he was working in Brownsville, San Benito and Harlingen, he lived with others, but would still visit [REDACTED] the woman he considered to be his mother.¹ [REDACTED] also stated that, while living with [REDACTED], he did not attend school in the United States.

In support of [REDACTED]'s statement, the record contains his sister [REDACTED]'s 1935 baptismal certificate; his own 1945 baptismal certificate and the 2005 sworn statement of his brother, [REDACTED] who when asked where [REDACTED] had lived between his 10th birthday and the time of his marriage to the applicant's mother, responded that he had lived with [REDACTED] in La Paloma, Texas. The AAO notes that [REDACTED] also states that he and [REDACTED] lived together in Mexico for an unidentified five year period, but does not find this statement to be inconsistent with his claim that [REDACTED] lived in the United States until he was 20 years of age, his age at the time of his 1952 marriage.

In that [REDACTED] did not attend school in the United States and U.S. census records are not publicly available beyond 1930, the AAO finds that, 75 years after [REDACTED]'s birth, there is little documentary evidence available to establish his residence in the United States as a child during the 1930s and 1940s. The number of family members and friends or associates who can attest to the events of [REDACTED]'s early life and are living is also limited. Accordingly, the AAO finds the testimony of [REDACTED] and his brother [REDACTED] along with the baptismal certificates for [REDACTED] and his sister, to be sufficient to establish that he was resident in the United States from the date of his birth until his 1952 marriage to the applicant's mother. While it does not find the applicant to have established that [REDACTED] resided in the United States from the date of his 1952 marriage until 1964, the year he registered with the Selective Service Administration, [REDACTED]'s residence in the United States prior to his marriage satisfies the residency requirement of section 301(a)(7) of the 1952 Act, ten years of total residence, five of which followed [REDACTED]'s 14th birthday. Accordingly, the applicant has established eligibility for a certificate of citizenship under the requirements of section 301(a)(7) of the 1952 Act.

¹ The AAO notes that [REDACTED]'s January 28, 2005 statement appears to address the concerns raised by the first officer to interview [REDACTED] regarding his U.S. residence. At that interview, the officer noted that Mr. [REDACTED] had stated that he had lived with [REDACTED] until the time of his marriage, while [REDACTED] had indicated that he had lived in her house until he was 13 years of age, the year in which he was baptized. As there is no transcript of the interview in the file, it is not possible to determine whether the discrepancy between [REDACTED]'s and [REDACTED]'s testimony in 1972 may have resulted from differing views of Mr. [REDACTED] residence at the locations where he was working.

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 met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.