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U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TX

Date:

SEP 18 2007

IN RE:

Applicant:



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:

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 March 6, 1969. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on November 30, 1967. The applicant's father is a native-born U.S. citizen, born on October 4, 1949 in McAllen, Texas. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship under 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 she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director concluded the applicant had failed to establish that her father had the required physical presence in the United States. The district director thus found the applicant ineligible for citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), and denied the application.

On appeal, the applicant states that she is expecting information from other sources. The AAO did not receive any additional documentation from the applicant either included with her appeal, or within the allotted 30 days. The AAO will thus review the matter based on the evidence already in the record.

"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 1969. 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 applicant must thus establish that her father was physically present in the United States for at least ten years prior to March 6, 1963 (the applicant's date of birth), at least five of which were after October 4, 1953 (applicant's father's 14th birthday).

The record contains several affidavits, including affidavits from the applicant's grandmother and two of her father's friends. The record also includes the applicant's father's birth certificate, the applicant's birth certificate, a letter from the social security administration verifying that the applicant's father's social security card was issued in 1966, and several pay stubs. The AAO notes that much of the evidence of the applicant's father's physical presence relates to the period after the applicant's birth and is therefore irrelevant to the applicant's claim.

The Board of Immigration Appeals found 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 affidavits submitted by the applicant contain important discrepancies. The applicant's grandmother's affidavit states that her son returned to the United States in 1957, whereas a letter dated a few weeks earlier than her affidavit states that he left the United States in 1955 and contains no mention of his return. The affidavit signed by [REDACTED] states that the applicant's father returned to the United States in 1963. The affidavit signed by [REDACTED] relates to the applicant's father's residence since 1965. The AAO notes that the applicant's first application for certificate of citizenship, Form N-600, filed in 1996, indicated that her father had resided in the United States since 1967. The present application for certificate of citizenship, Form N-600, indicates that the applicant's father resided in the United States from 1949 to 1954, and from 1963 to the present. The AAO notes that the applicant's father was married in Mexico in 1967, and that the applicant was born in Mexico in March 1969. The applicant's father registered the birth with the Mexican authorities in May 1969. The record contains pay stubs issued by [REDACTED] of Texas, dated December 1968, February 1969 and March 1969.

In light of the inconsistencies noted above, and given the lack of documentary evidence to corroborate the applicant's claim, the AAO finds that the applicant has failed to establish that her father was physically present in the United States for 10 years, five of which while over the age of 14.

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 applicant in the present case has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.