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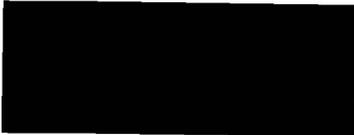
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: 

Office: HOUSTON, TX

Date:

OCT 09 2008

IN RE:

Applicant:



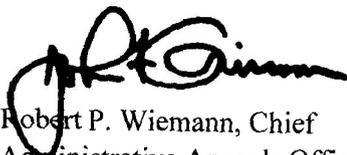
APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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 Field Office Director, Houston, 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 July 3, 1944 in Mexico. The applicant's mother, [REDACTED] is a lawful permanent resident of the United States. The applicant claims that his late father, [REDACTED], was a citizen of the United States born in Texas in 1918. The applicant also claims that his parents were married. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through a U.S. citizen parent.

The field office director found that the applicant had failed to establish that his father was a U.S. citizen, that his parents were married to each other, or that his father had the required physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that the director erred by "not attribut[ing] sufficient weight to the affidavits submitted" and "in finding the birth certificate of the applicant's father to be insufficient." See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO. No supplemental evidence was submitted with the appeal. The AAO notes that the applicant, through counsel, indicates in the Form I-290B that he will be submitting a brief or additional evidence within 30 days. On September 30, 2008, the AAO notified counsel that no brief or additional evidence had been received. The AAO requested that a copy of the brief or additional evidence, along with evidence of its timely filing, be submitted within 5 business days. Counsel replied that no brief or additional evidence had been submitted.

"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 1944. Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.¹

Section 201(g) of the Nationality Act of 1940 states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In the present matter, the applicant must establish that his father resided in the U.S. for ten years between 1918 and 1944, and that five of those years occurred after 1934, the applicant's father's 16th birthday.

¹ The AAO notes that the field office director mistakenly cited to section 301(a)(7) of the Immigration and Nationality Act as the applicable law in this case. Nevertheless, the AAO finds the director's error in this regard to be harmless.

In support of his citizenship claim, the applicant submitted, in relevant part: 1) his birth certificate, 2) a copy of a short form birth certificate relating to his father, 3) an affidavit executed by his mother, and 4) an affidavit executed by a family friend. The AAO again notes that no additional evidence was submitted on appeal.

The AAO 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 notes that the two affidavits submitted relate to the applicant's father's presence in the United States as a seasonal migrant worker after 1935 and 1937, respectively. The AAO notes that section 201(g) of the Nationality Act requires the applicant to establish that his father "resided" in the United States, not merely that he was physically present. Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. There is no evidence in the record suggesting that the applicant's father's place of general abode was in the United States. Further, the AAO finds that the evidence submitted is unpersuasive, given the interest of witnesses and lack of corroborating documentation. The AAO also notes that the applicant failed to submit evidence of his parents' marriage.

"There 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 his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.