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U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TX

Date:

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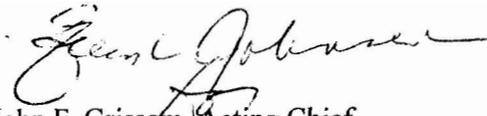
APPLICATION:

Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the
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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship, was initially denied by the Field Office Director, Harlingen, Texas on April 1, 2008. On May 8, 2008, the applicant filed a second Form N-600, which was treated by the Field Office Director as a request for a motion to reopen. The director affirmed her denial of the Form N-600 on May 19, 2008 and the applicant appealed the decision to the Administrative Appeals Office (AAO). The appeal will be sustained.

The record reflects that the applicant was born on October 24, 1959 in Mexico. The applicant's father, [REDACTED], now deceased, was born in Texas on June 20, 1930. The applicant's mother, [REDACTED] a Mexican citizen at the time of his birth, became a U.S. citizen in 1999. The applicant's parents married on August 8, 1953. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth from his U.S. citizen 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 October 24, 1959. Therefore, he must establish his claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1959.

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.

As the record contains a copy of [REDACTED] Texas birth certificate establishing him as a U.S. citizen, the only remaining issue before the AAO is whether, prior to the applicant's birth, [REDACTED] was physically present in the United States for periods totaling ten years, five of which followed his 14th birthday.

In filing the first Form N-600, the applicant indicated that his father had lived in the United States from 1972 to 1985. In the second N-600, he expanded this time period, stating that [REDACTED] had been physically present in the United States from his birth in 1930 until July 1953, from September 1953 until January 1959, and from March 1959 until September 3, 1985. In that only [REDACTED] physical presence in the United States prior to the applicant's birth is relevant to the applicant's claim to citizenship, the AAO will limit its consideration of the record to that evidence which addresses [REDACTED] presence in the United States prior to October 24, 1959:

- [REDACTED] delayed Texas birth registration card, issued on December 13, 1971, which indicates that his birth was registered on January 29, 1957 as having taken place on June 20, 1930 in Nueces County. The record also includes a birth certificate

for [REDACTED], based on two affidavits sworn by [REDACTED] and [REDACTED] on January 17 and January 18, 1957 respectively.

- [REDACTED] baptismal certificate issued on June 24, 1976, which establishes that he was baptized on July 26, 1930 at Sacred Heart Church in Corpus Christi, Texas.
- [REDACTED] earnings statement for the years 1952 through 1978, issued by the Social Security Administration in Brownsville, Texas, which indicates that prior to the applicant's birth, [REDACTED]'s earnings in the United States were limited to \$237.30 in 1952 and \$153.34 in 1953.
- A copy of [REDACTED]'s marriage certificate, which establishes that he married the applicant's mother in Matamoros, Mexico on August 8, 1953.
- An affidavit sworn by [REDACTED] on April 11, 2008, who states that he met [REDACTED] in Mexico and that knew that he was from Corpus Christi, Texas. Mr. [REDACTED] states that the applicant's father would travel between Corpus Christi and Mexico, and often talked about Corpus Christi when he visited Mexico. [REDACTED] also attests that after [REDACTED] married the applicant's mother, she moved to Corpus Christi to live with him.
- An affidavit sworn by [REDACTED] on March 24, 2008, who states that she met [REDACTED] who was a friend of her brothers, on her father's ranch in Mexico approximately 50-55 years ago. She reports that he visited her brothers frequently and that he often talked about his hometown, Corpus Christi. [REDACTED] also attests that she heard that [REDACTED] was married around 1950 and moved his wife to the United States.
- Copies of Certificates of Citizenship issued to five of the applicant's siblings.

The documentation submitted by the applicant in support of his application – [REDACTED]'s birth and baptismal certificates, his social security earnings for 1952 and 1953 and the affidavits sworn by [REDACTED] and [REDACTED] – is insufficient to establish [REDACTED]'s presence in the United States for the ten-year period required by section 301(a)(7) of the Act. However, as noted above, the record contains certificates of citizenship for five of the applicant's siblings, issued in 1977. A review of U.S. Citizenship and Immigration Services (USCIS) records relating to these certificates finds the legacy Immigration and Naturalization Service, now USCIS, to have granted certificates of citizenship to the applicant's five siblings on the basis of sworn statements attesting to [REDACTED] periods of physical presence in the United States.

Although the referenced statements were not made in support of the applicant's claim to citizenship, they address [REDACTED] physical presence in the United States during the period of time relevant to this proceeding and establish that he lived in the United States for at least ten years prior to the applicant's 1959 birth, with five of those years following his 14th birthday. The AAO takes

administrative notice of these statements and, in light of them, finds the documentary evidence submitted by the applicant, when combined with the certificates of citizenship included in the applicant's record, to demonstrate that the applicant has established his eligibility for a certificate of citizenship under section 301(a)(7) of the Act.

The regulations at 8 C.F.R. § 341.2(c) state that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has met his burden of proof in the present matter. Accordingly, the applicant's appeal will be sustained.

ORDER: The appeal is sustained.