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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: ST. PAUL, MN Date:

JUL 17 2009

IN RE:

[Redacted]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on October 28, 1947. His parents, as indicated on his birth certificate, were [REDACTED] and [REDACTED]. The applicant's father was born in Texas on August 8, 1926. The applicant's mother was not a U.S. citizen. The applicant's parents were married in Mexico on September 28, 1944. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth.

The field office director denied the application finding that the applicant had failed to respond to his request for evidence of the applicant's father's residence in the United States. On appeal, the applicant, through counsel, maintains that his father resided in the United States for the statutorily required period. The applicant submits, in relevant part, his father's Delayed Certificate of Birth and a transcript of his social security earnings statement.

"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 was born in 1947. The Immigration and Nationality Act went into effect on December 24, 1952. The Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(i), is therefore applicable in this case.

Section 201(g) of the Nationality Act states 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 . . .

The applicant must thus establish that his father resided in the United States for 10 years prior to October 1947 (the applicant's date of birth), five of which were after August 1942 (the applicant's father's 16th birthday).

The record indicates that the applicant's father was born and baptized in the United States in 1926. The applicant's father's birth certificate mentions his social security application (entry date December 1942) and selective service registration (entry date August 1944). The social security earnings statement indicates that the applicant earned \$3,350.20 between 1937 and 1950. The AAO notes that the applicant's parents were married in Mexico in September 1944, and that the applicant was born there in October 1947.

In *Savorgnan v. United States*, 338 U.S. 491, 505, (1950) the U.S. Supreme Court defined the term "residence" as the principal dwelling place of a person, or their actual place of general

abode, without regard to intent. The U.S. Ninth Circuit Court of Appeals additionally held in *Alvarez-Garcia v. Ashcroft*, 293 F. 3d 1155, 1157 (9th Cir. 2002), that when determining the issue of residence, “[t]he inquiry is one of objective fact, and one’s intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material.” (Citations and quotations omitted).

The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant’s father resided in the United States for 10 years prior to 1947, five of which after 1942. Indeed, the record indicates that the applicant’s father was in Mexico in 1944 and 1947. The earnings statement, covering the period from 1937 to 1950, cannot be used to establish the applicant’s father’s residence in the United States before 1947 because it does not indicate what, if any, income was earned in any particular year. The applicant’s father’s social security card application and selective service registration do not amount to evidence of residence in the United States, and even if they did, they only cover the years 1942 and 1944. As noted above, the applicant’s parents’ marriage certificate establishes that the applicant’s father was in Mexico in 1944. The AAO therefore finds that the applicant has failed to establish his father’s required residence in the United States.

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 has not met his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.