

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E₂

FILE:

Office: LOS ANGELES, CALIFORNIA

Date: JUL 20 2009

IN RE:

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF PETITIONER:

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, 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, Los Angeles, California, and 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 November 27, 1956. *See Birth Certificate for [REDACTED]*. The applicant's father was born in Chicago, Illinois on June 14, 1919. *See Delayed Record of Birth for [REDACTED]*. The applicant's mother was born in Mexico and is not a U.S. citizen. *See Marriage Certificate for [REDACTED] and [REDACTED]*. The record reflects that the applicant's parents were married in Mexico on November 10, 1944. *See Marriage Certificate, supra*. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The Field Office Director found that the applicant failed to establish that his father resided in the United States for ten years prior to the applicant's birth, as required by section 301(a)(7) of the former Act. *See Decision of the Field Office Director*, dated Sept. 2, 2008. The application was denied accordingly.

On appeal, the applicant contends through counsel that the Field Office Director erred in requiring documentary evidence of his father's physical presence in the United States. *See Brief on Appeal*, dated Oct. 27, 2008. Further, the applicant states that the testimony of the applicant's father provided sufficient evidence to support the claimed physical presence. *Id.*

"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 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The applicant in this case was born in 1956. Accordingly, section 301(a)(7) of the former Act controls his claim to derivative citizenship.¹

Section 301(a)(7) of the former Act stated 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

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

8 U.S.C. § 1401(a)(7) (repealed). The applicant must therefore establish that his father was physically present in the United States for ten years before November 1956, and that at least five of these years were after his father's 14th birthday in June, 1933. *See id.*

The record contains the following evidence relating to the applicant's father's physical presence in the United States during the requisite time period: a Delayed Record of Birth, issued in 1994, indicating that [REDACTED] was born on June 14, 1919, in Chicago, Illinois; a Marriage Certificate for [REDACTED] and [REDACTED], indicating that Mr. [REDACTED] was born in Chicago, Illinois; and a copy of a Worker Identification Card issued to Mr. [REDACTED] in 1943, which allowed him to work in the United States.

The record also contains two short declarations by the applicant's father. The applicant's father states that he moved to Mexico with his family approximately five months after his birth. *See Declaration of [REDACTED]*, dated Oct. 27, 2008. In 1942, when he was approximately 23 years old, the applicant's father returned to the United States to work. *Id.* He states that he worked mostly in the fields, and did occasional work for Union Railroad. *Id.* The applicant's father claims that he "worked in many places, including Reno, Sacramento, Fresno, and Concoran in California, as well as cities in Texas, Colorado, and Arkansas." *Id.* The applicant's parents married on November 10, 1944, in Mexico, and they had 11 children together. *Id.* Because "[i]t was very difficult to find a job in Mexico at this time, [the applicant's father] continued to work in the United States in order to provide for [his] family." *Id.* The applicant's father asserts that he spent most of his time in the United States during the 1940s and 1950s, and that "[f]rom 1942 to 1956, [he] spent at least ten years in the United States." *Id.* The applicant's father stated that he "would work for months at a time in the U.S. and mainly lived in Ranches [sic] or small communities with other workers." *Declaration of [REDACTED]*, dated Jul. 25, 2007. The applicant states that his father testified in accordance with his declarations during the applicant's interviews with USCIS. *See Brief on Appeal, supra.*

Here, the preponderance of the evidence shows that the applicant's father was born in the United States. *See Delayed Record of Birth, supra; Marriage Certificate, supra; Declarations of [REDACTED] supra.* However, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for ten years before the applicant's birth in 1956. The applicant presented his father's worker identification card, and his father's declarations indicate that he performed agricultural work in various U.S. locations during the period in question. However, the applicant's father's assertion that he "spent at least ten years in the United States" during the 1940s and 1950, along with a list of cities and states where he worked, provides insufficient detail to show that his periods of physical presence in the United States totaled ten years. Moreover, there are no additional affidavits or declarations in the record to corroborate the applicant's father's presence in the United States, or his absence from his family in Mexico. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d

847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967); *see also* 8 C.F.R. § 341.2(c) (“The burden of proof shall be upon 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 (Commr. 1989).

The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for ten years before the applicant’s birth in 1956. Accordingly, the applicant is not eligible for citizenship under section 301(a)(7) of the former Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.