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



**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED] Office: HARLINGEN, TX Date: **SEP 04 2009**

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433.

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.

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, Harlingen, 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 in Mexico on September 14, 1997. The applicant's birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's father acquired U.S. citizenship at birth through his father, the applicant's paternal grandfather. The applicant's grandfather was born in Texas in 1929. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, claiming to derive U.S. citizenship on the basis of his paternal grandfather's physical presence in the United States.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish his grandfather's physical presence in the United States. Specifically, the director noted that the inconsistencies in the applicant's grandfather's social security earnings statement. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he should have been provided an opportunity to examine the evidence relied upon by the director to discredit his claims. He further claims that his grandfather had the required physical presence, as evidenced by the grant of a certificate of citizenship to his father and other relatives.

Section 322 of the Act, 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000, applies to children born and residing outside of the United States, and provides that:

(a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The applicant's father, who was born in Mexico in 1957, acquired U.S. citizenship at birth. The record suggests that he has not been physically present in the United States. The applicant claims that his U.S. citizen grandfather was physically present in the United States for five years, two of which after his 14th birthday.

The record contains, in relevant part, the applicant's birth certificate, the applicant's father's certificate of citizenship, the applicant's paternal grandfather's birth, baptismal, death and marriage certificates. The record also includes a copy of the applicant's grandfather's social security earnings statements, reporting earnings from 1937 to 1994. The record also contains documents relating to the applicant's father's citizenship application.

The AAO finds that the applicant has not met his burden to prove that his paternal grandfather was physically present in the United States for five years, two of which while over the age of 14. The AAO notes the applicant's father obtained a certificate of citizenship in 2004, and that his uncle and cousins also obtained certificates of citizenship. The applicant maintains that these certificates were issued to his family members on the basis of the applicant's grandfather's physical presence in the United States. The AAO finds that the grant of a certificate of citizenship to another does not constitute evidence of a parent's or grandparent's physical presence. The AAO cannot find that an applicant has met his burden of proof based on assumptions regarding what evidence must have been presented in another case. Rather, the AAO must evaluate the evidence in the record before it. The evidence in the record before the AAO at this time does not establish that the applicant's grandfather was physically present in the United States for five years, two of which while over the age of 14.

In this regard, the AAO notes that the evidence in the record consists of the applicant's grandfather's birth and baptismal certificate (evidencing his presence in the United States in 1929) and his marriage certificate (evidencing his marriage in Texas in 1985). With respect to the applicant's grandfather's social security earnings statement, the AAO finds that the inconsistencies highlighted by the director have not been adequately addressed by the applicant. The AAO also notes that the earnings statement relates to three different social security numbers, and includes income earned after the applicant's grandfather's death in 1988. The AAO notes that the applicant has not provided any corroborating evidence to establish that his grandfather was employed in the United States as indicated in the earnings statement. The AAO notes that the applicant's grandfather was married in Texas in 1985. The record suggests that he was married and living with the applicant's grandmother in Mexico since the 1950s. The applicant's grandparents had 10 children, all born in Mexico from 1956 to 1974. The applicant has not submitted any housing, school or medical records that would indicate that his grandfather was physically present in the United States as claimed.¹

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 failed to meet his burden to prove that his grandfather was physically present in the United States for five years, two of which while over the age of 14. The AAO therefore finds that the applicant has not established his eligibility for U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433.

ORDER: The appeal is dismissed.

¹ The AAO notes that a review of the applicant's father's immigration file reveals that his application for a certificate of citizenship was initially denied in 1982. In a sworn statement before the immigration officer at that time, the applicant's grandfather stated that he lived in Mexico from the age of 2 months until about 1978, when he started commuting daily to Texas to work.