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

E₂

[Redacted]

FILE: [Redacted] Office: SAN DIEGO, CA

Date: **APR 08 2010**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1973).

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the San Diego, California District Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father. The district director determined that the applicant failed to submit requested evidence to establish the requisite physical presence of his father in the United States and denied the application. On appeal, counsel asserts that the evidence previously submitted established the requisite physical presence of the applicant's father sufficient for the applicant to acquire citizenship through his father under former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has held that "[t]he 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, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The applicant in this case was born in 1973 in Mexico. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1973),¹ is therefore applicable to his case.

Former section 301(a)(7) of the Act stated that individuals meeting the following description shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The record in this case provides the following pertinent facts. The applicant was born on April 17, 1973 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's father was born in Mexico on September 20, 1952 and acquired U.S. citizenship at birth through his father, the applicant's grandfather, [REDACTED] who was born in 1926 in the United States. The applicant's parents were married in 1972 in Mexico. The applicant's mother is a lawful permanent resident of the United States, but has not naturalized.

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The applicant bears the burden of proof in these proceedings. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). To have acquired citizenship at birth through his father, the applicant must establish that his father was physically present in the United States for at least 10 years prior to his birth, including at least five years after September 20, 1966 (when his father turned 14 years old).

The record contains statements from the applicant's father, his father's aunt and his father's cousin regarding his father's presence in the United States before his birth. In his affidavit dated June 17, 2009, the applicant's father states that he came to the United States in 1961 when his aunt, [REDACTED] brought him to her home in Los Angeles so that he could receive medical treatment. The applicant's father reports that he received medical care, went to school and lived with his aunt in Los Angeles until 1967 or 1968. He then moved to Calexico, California where his cousin, [REDACTED] introduced him to [REDACTED]. The applicant's father states that he worked for [REDACTED] at her store, [REDACTED] located on [REDACTED] in Calexico, and that [REDACTED] paid him in cash. He also reports that he lived with [REDACTED] at her residence on [REDACTED] in Calexico. The applicant's father recounts that after working at the Gold Star store for several years, he worked at [REDACTED] in Calexico for two or three years and then worked at [REDACTED] in Calexico. During this time, the applicant's father explains that he lived with [REDACTED], who wanted him to help take care of her mother. The applicant's father states that he moved back to Mexico in 1973.

These assertions are not entirely consistent with prior statements of the applicant's father in the record. In an earlier affidavit, dated April 11, 1997, the applicant's father stated that he moved to Calexico in 1964, not 1967 or 1968. He reported that he lived with [REDACTED], but did not mention working at [REDACTED] or [REDACTED]. Instead, the applicant's father stated that in Calexico, he took care of [REDACTED] animals, did yard work and other tasks for her, as well as working at the border helping people carry their belongings from Mexicali to Calexico. He also stated that he moved back to Mexico in 1972, not 1973. Although in both affidavits, the applicant's father stated that he began living in the United States in 1961, in his application for a certificate of citizenship dated February 14, 1970, the applicant's father stated that he did not begin living in the United States until five years later, in 1966.

In her June 17, 2009 affidavit, the applicant's father's aunt, [REDACTED] states that she and her husband brought the applicant's father to live with them in Los Angeles to receive medical care for meningitis. She states that they took him to the Orthopaedic Hospital in Los Angeles and enrolled him in school, although she does not remember the name of the school. She further states that to the best of her recollection, the applicant's father lived with her and her husband "until at least 1964 and most likely until 1966 or 1967." However, in a prior affidavit dated January 15, 1997, [REDACTED] stated that she took the applicant's father to "Ford School and enrolled him there until 1964, when he left."

In a June 17, 2009 affidavit, the applicant's father's cousin, [REDACTED], states that he remembers seeing the applicant's father on unspecified occasions when he was ill and living with [REDACTED]. Mr. [REDACTED] reports that he began working for [REDACTED] in Calexico in 1968 and introduced the applicant's father to [REDACTED] who began to employ the applicant's father in 1968.

The record contains the following, additional evidence of the physical presence of the applicant's father in the United States before the applicant's birth:

- A letter and index card showing that the applicant's father was admitted to the Orthopaedic Hospital in Los Angeles, California on December 5, 1962. The letter explains that his medical records are no longer available.
- A Social Security Administration earnings statement for the applicant's father showing that he worked in the United States, in relevant part, from 1969 to 1973.
- A letter from the National Archives and Records Administration verifying that the applicant's father registered with the selective service in California on May 17, 1971.
- A nonimmigrant visa and departure card evidencing the applicant's father's admission to the United States from July 30, 1963 to January 30, 1964.
- The applicant's father's application for a certificate of citizenship, dated February 14, 1970, on which he stated that he began living in the United States in 1966.
- A Declaration of Homestead, Imperial County, California, dated July 26, 1968 and showing that [REDACTED] (the applicant's father's former employer) resided with her brother and mother at a home on [REDACTED] in Calexico, California.
- California State and Imperial County property and tax documents showing that [REDACTED] was a copartner of the business, [REDACTED], located on "[REDACTED]" from 1962 through 1970; that she owned a business, [REDACTED], in 1976 and that her last known address in 1977 was on [REDACTED] in Calexico, California.
- The certificate documenting the applicant's parents' marriage on June 15, 1972 in Mexico and the certificate of the applicant's birth on April 17, 1973 in Mexico.

In sum, the relevant evidence demonstrates that the applicant's father was physically present in the United States from December 1962 through January 1964 and again from 1969 to sometime prior to June 15, 1972, a period of approximately six years prior to the applicant's birth, including less than four years after the applicant's father turned 14. The record does not establish that the applicant's

father was physically present for at least ten years, as required for the applicant to acquire citizenship under former section 301(a)(7) of the Act.

On appeal, counsel asserts that the district director denied the application “based solely on the lack of documentary evidence establishing a portion of [the applicant’s] father’s physical presence in the United States” and that the district director did not credit the testimony of the applicant’s father, the applicant’s father’s aunt and cousin. *Appellate Brief* at 3-7. We find no such error in the district director’s decision, which stated that the evidence failed to establish the requisite physical presence of the applicant’s father. Although the director did not explain in detail the probative value of each piece of evidence, there is no indication in his decision that he failed to consider all the relevant evidence, including the affidavits.

Even if the district director had improperly assessed the evidence, we have conducted a de novo review of the entire record.² As previously noted, the record establishes the applicant’s father’s presence in the United States for approximately six years before the applicant’s birth. The record does not, however, establish the applicant’s father’s presence in the United States before 1962 and between February 1964 and 1969. In their 1997 and 2009 affidavits, the applicant’s father and [REDACTED] also provided inconsistent statements regarding his physical presence from 1964 to 1969. In his 2009 affidavit, the applicant’s father states that “to the best of [his] recollection, he stayed with [his] aunt until 1967 or 1968” when he moved to Calexico and began working for [REDACTED]. Yet, in his 1997 affidavit, he stated that he moved to Calexico in 1964. In her 2009 affidavit, [REDACTED] also states that to the best of her recollection, the applicant’s father lived with her “until at least 1964 and most likely until 1966 or 1967.” In her prior affidavit of 1997, however, [REDACTED] stated that the applicant’s father left her home in 1964. [REDACTED], the applicant’s father’s cousin, states that he remembers seeing the applicant’s father at [REDACTED] home at unspecified times and that he introduced the applicant’s father to [REDACTED] in 1968, but he provides no further details. Moreover, the applicant’s father, in his affidavits, stated that he began residing in the United States in 1961, but on his application for a certificate of citizenship, he stated that he did not begin residing in the United States until 1966. The statements of the applicant’s father, [REDACTED] and [REDACTED] while relevant, present unresolved inconsistencies and fail to provide detailed, probative information sufficient to establish the physical presence of the applicant’s father in the United States prior to 1962 and from 1964 to 1969.

On appeal, counsel asserts that absent a finding of contradictory evidence, implausibility or adverse credibility, the declarations of the applicant’s father, [REDACTED] and [REDACTED] must be accepted as true. Counsel cites *Hartooni v. Immigration and Naturalization Service*, 21 F.3d 336 (9th Cir.

² The AAO reviews each appeal on a de novo basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). See *Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

1994) and *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847 (9th Cir. 2004) in support of her claim. These cases are readily distinguishable. In *Hartooni*, the court found that an immigration judge's ambiguous statements regarding the respondent's testimony in support of her application for asylum and withholding of deportation did not constitute an adverse credibility determination and that the Board of Immigration Appeals' "inaccurate, conclusory, and boilerplate decision" affirming the immigration judge's ruling was arbitrary and capricious. *Hartooni*, 21 F.3d at 342-43. In *Lopez-Alvarado*, the court reviewed the denial of an alien's application for cancellation of removal. The court held that the immigration judge "improperly required documentary evidence, despite substantial evidence supporting continuous presence and the lack of an adverse credibility finding." *Lopez-Alvarado*, 381 F.3d at 850. The court noted that the testimony of several of the respondent's past employers, landlords, pastor and friends provided "a detailed and internally consistent chronology" of the respondent's presence in the United States and that the statements' "evidentiary value is powerful in the aggregate." *Id.* at 852, 854. In contrast, the record in this case contains specific, unresolved inconsistencies and a lack of detailed testimony, deficiencies which seriously detract from the probative value of the statements submitted to demonstrate the applicant's father's presence in the United States before 1962 and from 1964 to 1969.

Counsel cites *Vera-Villegas v. Immigration and Naturalization Service*, 330 F.3d 1222 (9th Cir. 2003) and *Murphy v. Immigration and Naturalization Service*, 54 F.3d 605 (9th Cir. 1995) in support of her position that the application should not be denied based solely on the lack of corroborative documentation. We recognize the challenges inherent in establishing an individual's whereabouts over forty years ago and our decision is not based on the lack of corroborating documentation. Rather, as explained in the foregoing discussion, the only evidence regarding the applicant's father's presence in the United States prior to 1962 and between February 1964 and 1969 are the statements of the applicant's father, [REDACTED] and [REDACTED]. These statements fail to provide the "detailed and internally consistent chronology" the court found to be crucial to the evidentiary weight of the testimony in *Lopez-Alvarado*. Here, the applicant's father and [REDACTED] provided statements in 2009 that are inconsistent with their prior statements in 1997. The applicant's father's statement in 1970 that he began living in the United States in 1966 contradicts his assertion in his affidavits that he began living in the United States in 1961. We acknowledge that [REDACTED] passed away in 1983 and we recognize the difficulties in documenting the applicant's father's employment in Calexico without her testimony. However, those difficulties do not explain why the applicant's father's affidavits are inconsistent regarding the dates and nature of his employment in Calexico. Accordingly, the applicant's failure to establish his father's presence in the United States for the full, requisite period is not due to the lack of documentation, but to the inconsistent and contradictory statements of the three affiants.

Moreover, unlike the situation in *Murphy*, where the government bore the burden of proof to establish the petitioner's alienage, the applicant here bears the burden of proof to demonstrate his claimed citizenship by a preponderance of the evidence. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S.

875, 885 (1988). *See also Fedorenko v United States*, 449 U.S. 490, 506 (1981) (“[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.”). In applications for certificates of citizenship, section 341(a) of the Act clearly states that a certificate will be issued only “upon proof to the satisfaction of the Attorney General [now Secretary of the Department of Homeland Security].” The regulation at 8 C.F.R. § 341.2(c) further prescribes that the “burden of proof shall be upon the claimant . . . to establish the claimed citizenship by a preponderance of the evidence.” In this case, the preponderance of the evidence demonstrates the applicant’s father’s physical presence in the United States for only six of the requisite ten years. The applicant is therefore ineligible for citizenship under former section 301(a)(7) of the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.