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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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[REDACTED]

FILE: [REDACTED] Office: HOUSTON, TX Date: AUG 03 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1942)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, 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 on [REDACTED] in Mexico. The applicant's parents are [REDACTED]. The applicant's father was born in Texas on [REDACTED]. The applicant's parents were married in Mexico on [REDACTED]. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director found that the applicant had failed to establish that his father had the ten years of residence in the United States required for the applicant to acquire U.S. citizenship at birth under section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601 (1942).

On appeal, the applicant maintains that his father resided in the United States as required. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. On appeal, the applicant re-submits copies of documents relating to his brother's citizenship, a general affidavit executed by his uncle and his birth certificate. The applicant, through counsel, asserts that his citizenship claim should be granted because his brother's Form N-600 was approved. *Id.*

Different statutory requirements apply to the applicant and his brother. As the Ninth Circuit Court of Appeals has explained, "[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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (citations omitted). The applicant's brother was born in 1937 and therefore was not required to establish his father's residence under section 201 of the Nationality Act.¹ The Nationality Act was not enacted until 1940. The applicant was born in 1942. Section 201 of the Nationality Act is therefore applicable to his case.

Section 201(g) of the Nationality Act states, in pertinent part:

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: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of

¹ The law in effect at the time of the applicant's brother's birth required only that the U.S. citizen parent had resided in the United States at some point prior to the child's birth and that the child had met certain retention requirements. *See* Section 1993 of the Act of May 24, 1934, Pub. L. No. 73-250.

thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The applicant must thus establish that his father resided in the United States for ten years prior to [REDACTED], five of which were after [REDACTED] (his sixteenth birthday). The record in this case includes, in relevant part, the applicant's birth certificate, the applicant's father's birth certificate, the applicant's parents' marriage certificate, information from the 1930 census, the applicant's brother's citizenship documents and the applicant's uncle's affidavit.

The applicant's father's birth certificate indicates that he was born in Texas in 1915. The 1930 census information indicates that he was residing with the applicant's grandfather in Texas at that time. The applicant's parents' marriage certificate was issued in Mexico in 1936. The applicant's uncle states in his affidavit that the applicant's father worked with him in the United States starting in 1935. No other relevant evidence has been provided with respect to the applicant's father's residence in the United States.

The AAO finds that the applicant has failed to establish that his father resided in the United States for ten years prior to [REDACTED] (his sixteenth birthday). Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. The only documentation of the applicant's father's U.S. residence is the 1930 census information. Otherwise, the record shows that the applicant's father was married in Mexico in 1936, that his son (the applicant's older brother) was born in Mexico in [REDACTED] and that the applicant's father's Mexican residence was listed in the applicant's birth certificate, as well as his father's U.S. citizenship card. The applicant's uncle states in his affidavit that he worked with the applicant's father since 1935, but he provides no further, probative and detailed information. The applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for ten years prior to 1942, five of which were after 1931. Thus, the applicant did not acquire U.S. citizenship at birth through his father.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.