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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

E₂



FILE:



Office: SAN ANTONIO, TX

Date: DEC 16 2010

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1949)

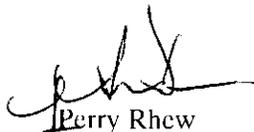
ON BEHALF OF APPLICANT:



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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed in 1993. The applicant filed a motion to reopen or reconsider.¹ The previous decisions of the AAO and the director will be withdrawn and the matter remanded to the director for entry of a new decision.

The record reflects that the applicant was born on August 25, 1949 in Mexico. The applicant's parents were [REDACTED]. The applicant's father was born in Texas on July 15, 1895. The applicant's parents were married in Texas in 1958. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The AAO dismissed the applicant's appeal upon finding that he had failed to submit evidence in support of his claim that his father had resided in the United States as required by section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601 (1949).

The applicant's submitted the following in support of his citizenship claim: his birth certificate; his father's birth certificate, affidavit of birth facts, marriage, divorce and death certificates; the affidavit of [REDACTED] (the applicant's sister); an employment letter indicating the applicant's father was employed in the United States between January and August of 1942; an attorney letter stating that the applicant's father was in the United States since 1945; and property and other records dated after the applicant's date of birth.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established his eligibility for a certificate of citizenship for the reasons discussed below and his appeal will therefore be dismissed.

The AAO notes 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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (citations omitted). The applicant was born in 1949. Section 201 of the Nationality Act is therefore applicable to this 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 . . .

¹ The applicant filed a second Form N-600, Application for Certificate of Citizenship, which was rejected and treated as a motion pursuant to the regulation at 8 C.F.R. § 341.6.

Because the applicant was born out of wedlock, section 309(b) of the Immigration and Nationality Act of 1952 (the Act), 8 U.S.C. § 1409(b), apply to his case. Section 309(b) of the Act provides, in relevant part, that

(b) ... the provisions of section 310(a)(7) shall apply to a child born out-of-wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), provided, in turn,

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 . . .

The applicant's eligibility for U.S. citizenship under section 301(a)(7) of the Act was not previously considered by the director and, therefore, the previous decisions must be withdrawn and the matter remanded to the director to determine whether the applicant fulfills the requirements of section 309(b) of the Act and, if so, whether he has established that his father had the physical presence required in section 301(a)(7) of the Act. . If the applicant is found ineligible for citizenship under sections 301(a) and 309(a) of the Act, the director shall certify his decision to the AAO for review.

ORDER: The previous decisions of the AAO and the director are withdrawn, and the matter is remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.