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

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[redacted]

FILE: [redacted] Office: EL PASO, TX Date: MAR 0 6 2010

IN RE: [redacted]

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

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 Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on September 6, 1951. His parents, as indicated on his birth certificate, are and The applicant's father was born in Redford, Texas on June 27, 1927. The applicant's mother was not a U.S. citizen. The applicant's parents were married in Mexico in 1948. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship under section 201 of the Nationality Act of 1940.

The field office director denied the application finding that the applicant had failed to establish that his father had the required residence in the United States. On appeal, the applicant, through counsel, maintains that his father resided in the United States for at least 10 years, five of which while over the age of 16. *See* Statement of Applicant on Form I-290B, Notice of Appeal to AAO. The applicant further claims that he is not subject to any retention requirements or, alternatively, that he can regain his U.S. citizenship by taking an Oath of Allegiance. *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. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1951. The Immigration and Nationality Act (the Act) went into effect on December 24, 1952. The Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), is therefore applicable in this case.

Section 201(g) of the Nationality Act states that:

> 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 thirteen and twenty-one years . . . [1]

The applicant must thus establish that his father resided in the United States for 10 years prior to September 6, 1951 (the applicant's date of birth), five of which were after June 27, 1943 (the applicant's father's 16th birthday).[2]

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[1] Section 201(h) of the Nationality Act further states that "[t]he foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934."

[2] Section 201(i) of the Nationality Act, introduced in 1946, provided for transmission of U.S. citizenship from a parent who had resided in the United States for five years after the age of 12. This provision was only applicable to children of

The record contains, in relevant part, the applicant's birth certificate, the applicant's father's and grandfather's birth certificates, the applicant's father's and older sister's baptismal certificates, the applicant's father's social security earnings statements for the years 1960-1983, the applicant's parents' marriage certificate, and two affidavits executed by the applicant's father.

The record indicates that the applicant's father was born and baptized in the United States in 1927. The question remains, however, whether he resided in the United States for the period of time required by statute. In *Savorgnan v. United States,* 338 U.S. 491, 505, (1950) the U.S. Supreme Court defined the term "residence" as the principal dwelling place of a person, or their actual place of general abode, without regard to intent. The Ninth Circuit Court of Appeals additionally held in *Alcarez-Garcia v. Ashcroft,* 293 F. 3d 1155, 1157 (9th Cir. 2002), that when determining the issue of residence, "[t]he inquiry is one of objective fact, and one's intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material." (Citations and quotations omitted).

The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant's father resided in the United States five years after his 16th birthday in 1943.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that "when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant." (citations omitted)

Although the applicant's father may have been present in the United States for 10 years prior to 1951, the record does not establish that he resided here for five years between 1943 and 1951. The AAO first notes that the applicant's parents were married in Mexico in 1947 and that their marriage certificate indicates that that applicant's father was a resident of Mexico at that time. The applicant's father's social security earnings statements post-date the applicant's birth and are therefore irrelevant. The applicant's father's affidavits generally state that he was employed in the United States as a farm worker prior to meeting the applicant's mother in 1947, and in the 1950s. The applicant's father's first affidavit, however, notes that he did not seek employment as a farm worker until after his 18th birthday (in 1945). The affidavits do not provide sufficient detail, are inconsistent, and are not corroborated by documentary evidence or affidavits of others. The AAO further notes that the applicant has not submitted his older siblings' birth certificates, so that it could be determined whether they were born in Mexico or the United States. The record contains no other evidence of the applicant's father's residence in the United States from 1943 to 1951, such as, for example, census or school records. The applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for the requisite period.

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parents who served in the U.S. armed forces during World War II. There is no indication in the record that the applicant's father served in the U.S. military.

Having found that the applicant did not establish that his father resided in the United States as required, the AAO need not address the issue of the applicant's retention of U.S. citizenship.

The regulation at 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 not met his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.