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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: TUCSON, ARIZONA

Date: MAR 16 2010

IN RE:

Applicant: [REDACTED]

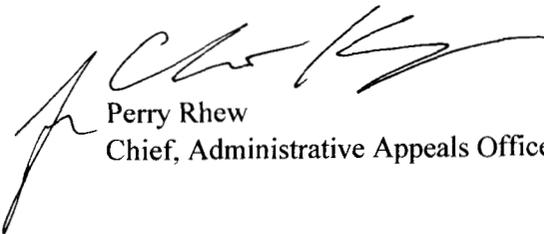
APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's motion to reopen his Form N-600, Application for Certificate of Citizenship, was dismissed by the Field Office Director, Tucson, Arizona.¹ The Field Office Director certified his decision to the Administrative Appeals Office (AAO) for review. The Field Office Director's decision will be withdrawn. The application will be approved.

The record reflects that the applicant was born on January 10, 1970 in Mexico. The applicant's father, [REDACTED], was born in the United States on July 18, 1921. The applicant's parents were married in Texas in 1977, and divorced in 1983. The applicant's mother became a U.S. citizen upon her naturalization in 2001. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1970).²

At the outset, the AAO notes that pursuant to the regulations, at 8 C.F.R. § 341.6, "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration"

The applicant's first Form N-600, Application for Certificate of Citizenship, was denied in 1983. His second Form N-600 was rejected, adjudicated as a motion and dismissed in 2005. The applicant's current application is accompanied by a motion to reopen, as well as a newspaper obituary relating to his father, his father's social security earnings statement, an immigration judge order relating to the applicant's uncle, written testimony of the applicant's father and an affidavit executed by his mother.

The field office director dismissed the applicant's motion and reaffirmed the denial of his application upon finding that he had failed to submit sufficient evidence to warrant reopening. The AAO notes that a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The AAO finds that the newspaper obituary and the applicant's mother's affidavit constitute new evidence warranting reopening of the applicant's case.

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, 1029 (9th Cir. 2000) (citations omitted).

¹ The director determined that the applicant's submission did not meet the applicable requirements for a motion to reopen and "rejected" the motion. The AAO interprets the director's decision as a dismissal. *See* 8 C.F.R. § 103.5(a)(4) (providing that "a motion that does not meet applicable requirements shall be dismissed.")

² 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 was born in 1970. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former Act states that the following 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.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his father was physically present in the United States for at least 10 years prior to 1970, five of which after 1935 (when his father turned 14 years old).

The record contains, in relevant part, the applicant's birth certificate, the applicant's father's delayed birth certificate (indicating he was born in Arizona in 1921), the applicant's father's baptismal certificate, the applicant's parents' marriage certificate (indicating that they were married in Texas in 1977) and a number of affidavits and statements from family and friends. Notably, the applicant recently submitted an affidavit executed by his mother explaining that the applicant's father was present in the United States from birth until he was 6 years old (in 1927) and then since 1953.³ The applicant's mother was born in 1939 and therefore not personally acquainted with the facts stated in her affidavit, at least with respect to the years the applicant's father purportedly resided in the United States prior to her meeting him.⁴ Nevertheless, the AAO notes that the applicant's mother's statements are corroborated by the other documents in the record and the testimony of the applicant's father (dated in 1981) where he states that he lived in Mexico only from the age of 6 until he returned to the United States.

³ The AAO notes that the affidavit indicates that the applicant's father returned to the United States when he was 22. The applicant's father was 32 years old in 1953, not 22 as indicated in the affidavit. This same mathematical error appears in the applicant's father's 1981 testimony. Based on the social security earnings record, which start in 1953, the AAO finds that the applicant's father likely returned to the United States in 1953 at the age of 32. The AAO does not deem this mathematical error to be fatal to the applicant's claim. Even if the applicant's father did not reside in the United States from 1943 to 1953, the applicant's sufficiently established his father's physical presence in the United States starting in 1953.

⁴ The applicant's mother states that she met the applicant's father in 1961. *See* Affidavit of [REDACTED] at ¶ 16.

The AAO finds that the applicant has established that his father was physically present in the United States for ten years prior to 1970, five of which after attaining the age of 14. The AAO notes that the relevant evidence submitted consistently indicates that the applicant's father was employed as a laborer or agricultural worker, and that he was physically present in the United States during the work week and only returned to Mexico to visit his family on the weekends and holidays. The affidavits submitted by the applicant are further corroborated by the social security earnings records for the applicant's father for 1953 through 1959, 1961 through 1962 and 1964 through 1969.

The AAO notes "[t]here 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 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 AAO finds that the applicant has met his burden of proof. The application will therefore be approved.

ORDER: The Field Office Director's decision is withdrawn. The application is approved.