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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: HARLINGEN, TEXAS Date: JAN 26 2011

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 201 of the Nationality Act of 1940, 8 U.S.C. § 601 (1950).

ON BEHALF OF PETITIONER:

[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 $630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Harlingen, Texas, cancelled the applicant's certificate of citizenship. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on February 6, 1950, to married parents [redacted] and [redacted] The applicant's father was born in the United States on April 16, 1920. The applicant's mother was born in Mexico and was not a U.S. citizen at the time of the applicant's birth. The applicant sought a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father. U.S. Citizenship and Immigration Services (USCIS) approved the application on August 7, 2002.

On July 16, 2008, the director issued a Notice of Intent to Cancel the applicant's certificate of citizenship pursuant to section 342 of the Act, 8 U.S.C. § 1453, based on evidence that the applicant's father began to reside in the United States after the applicant's birth. *See Notice of Intent to Cancel*, dated July 16, 2008. The notice informed the applicant that his father "testified before a Service Officer on April 13, 1978, that he had been physically present in the United States from 1963 and not before." *Id.* Accordingly, the director indicated that it would not be possible for the applicant's father to establish the requisite period of residence in the United States before the applicant's birth in 1950. *Id.*

The applicant filed several documents in response to the notice and appeared in person before a USCIS officer, with counsel, to provide additional evidence in support of his application. The director determined that the applicant failed to show that his father met the residency requirements for derivative citizenship, and entered an order administratively cancelling the applicant's certificate of citizenship. *See Administrative Cancellation of Certificate of Citizenship*, dated June 8, 2010. On appeal, the applicant contends through counsel that the director erred in cancelling his certificate of citizenship. *See Form I-290B, Notice of Appeal*, filed July 12, 2010; *Brief in Support of Appeal*, dated Aug. 6, 2010.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1950. Accordingly, section 201 of the Nationality Act of 1940 ("the 1940 Act"), 8 U.S.C. § 601 (1950), is applicable in this case.[1] This section stated that the following shall be nationals and citizens of the United States at birth:

> 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

[1] It appears that the director improperly adjudicated the application under former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, which is not applicable in this case.

> United States or its outlying possessions for a period or periods totaling five years between the ages of 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, 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 therefore establish that his father resided in the United States for ten years before his birth on February 6, 1950, and that at least five of these years were after his father's sixteenth birthday on April 16, 1936. Section 201(g) of the 1940 Act. Additionally, the applicant must show that he resided in the United States or its outlying possessions for a period or periods totaling five years between the ages of 13 and 21, or establish that the retention requirements do not apply to him. *Id.*

Administrative cancellation of a certificate of citizenship is authorized under section 342 of the Act, which provides in pertinent part:

> The Attorney General is authorized to cancel any certificate of citizenship . . . if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefor and shall be given at least sixty days in which to show cause why such document or record should not be canceled.

Under the applicable regulations, a notice of intent to cancel a certificate of citizenship must contain:

> allegations of the reasons for the proposed action and shall advise the person that he may submit, within 60 days of service of the notice, an answer in writing under oath or affirmation showing cause why the certificate . . . should not be canceled, that he may appear in person before a naturalization examiner in support of, or in lieu of his written answer, and that he may have present at that time, without expense to the Government, a [qualified] attorney or representative . . . .

8 C.F.R. § 342.1. During administrative cancellation proceedings, the USCIS officer "may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or by any other person during any investigation, examination, hearing, trial, proceeding, or interrogation." 8 C.F.R. § 342.5(d).

The record reflects that the applicant's father was born in Texas on April 16, 1920. *See Delayed Birth Certificate for* [redacted] filed Sep. 12, 1966; *Letter from the Texas State Registrar*, dated Aug. 7, 2008; *Baptism Certificate for* [redacted] dated Aug. 19, 2008; *Statement from the* [redacted] *Civil Registry*, dated Aug. 8, 1946; *Death Certificate for* [redacted], issued Aug. 7, 2008.

However, the evidence in the record is insufficient to show that the applicant's father resided in the United States for ten years before the applicant's birth in 1950, and that five of these years were after his sixteenth birthday in 1936. Specifically, the social security statement in the record reflects earnings for [redacted] beginning in 1964. Several field labor records corroborate employment during the years 1973 and 1974, and the compensation records reflect earnings for 1981 and 1982. Additionally, the letter from Rio Grande Equipment Co., indicates that the applicant's father started working for the company "beginning in the mid to late 1960's." *Letter from* [redacted] dated Sep. 3, 2008. Although the record contains two short affidavits stating that the applicant's father worked in the United States during his youth, *see Affidavit of* [redacted] dated Sep. 3, 2008 (stating that he worked with the applicant's father on "several ranches from 1940 to 1959"); *Affidavit of* [redacted] dated Sep. 3, 2008 (stating that her older brother "worked in the farm lands in his early years"), these affidavits are lacking in detail, and not supported by the other evidence in the record. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); [redacted] 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

Finally, as reflected in the cancellation proceedings, the record contains a sworn statement by the applicant's father, executed on April 13, 1978, indicating that he "ha[s] been physically present in the U.S. since 1963 to date and not before." This sworn statement contradicts the applicant's claim that his father resided in the United States from 1920 until his death in 1995, and the applicant has presented no evidence to resolve this inconsistency. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (attempting to explain or reconcile inconsistencies will not suffice unless competent objective evidence is submitted).

Moreover, even if the applicant's father could satisfy the applicable residency requirements, the applicant has not presented any evidence that he meets, or is excluded from, the retention requirements set forth in section 201(g) of the 1940 Act.

Accordingly, the applicant has not established that he meets the eligibility requirements for the automatic acquisition of citizenship under section 201(g) of the 1940 Act. Because the applicant is not eligible for citizenship under section 201(g) of the 1940 Act, the applicant's certificate of citizenship was illegally obtained, and the administrative cancellation of the certificate of citizenship was proper. Section 342 of the Act; 8 C.F.R. § 342.1.

On appeal, the applicant contends that the director erred in cancelling his certificate of citizenship because: (1) the director failed to provide the applicant with a copy of his father's testimony; and (2) the director failed to prove that the applicant obtained his certificate of citizenship through fraud or misrepresentation. These contentions lack merit.

First, the director's notice of intent to cancel the certificate of citizenship provided the applicant with the reasons for the proposed action, as required by statute and regulation. Section 342 of the Act; 8 C.F.R. § 342.1. The notice fully informed the applicant of the information pertinent to his claim,

and neither the statute nor the regulations require USCIS to provide an actual copy of the derogatory evidence. *Id.; see also* 8 C.F.R. § 103.2(b)(16)(i). Nonetheless, a copy of the applicant's father's sworn statement is provided with this decision.

Second, the applicant claims, without citation to any legal authority, that once an applicant has obtained a certificate of citizenship, USCIS bears the burden of showing by clear and convincing evidence that the certificate of citizenship was obtained through fraud or misrepresentation. However, the statute provides that a certificate of citizenship may be cancelled "if it shall appear to the [Director's] satisfaction that such document or record was illegally or fraudulently obtained." Section 342 of the Act. Accordingly, the director may cancel a certificate of citizenship if it appears to have been illegally obtained, unless the applicant can show cause why it should not be cancelled. *Id.* Because the applicant failed to show cause why the certificate should not be cancelled, the director's decision was proper. *Id.*

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Further, a certificate of citizenship may be cancelled if it appears to the director that the certificate was illegally obtained. Section 342 of the Act. Here, the applicant has failed to show cause why his illegally obtained certificate of citizenship should not be cancelled. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

SUPPLEMENTARY REPORT NO. ONE 13 April '78

Subject USC father Aniceto Lopez of P.O. Box 37, Los Indios, Tx. I under oath attest that I have my home, my wife and household goods in Mexico. I permanently reside in Mexico and have been physically present in the U.S. where I work on a ranch for F.H. NeSmith, P.O. Box 62, Harlingen, Tx where he has given me a room to sleep in Monday thru Saturday of each week. I have been physically present in the U.S. since 1963 to date and not before. I am the father of the following applicants for citizenship:

Jose Angel Lopez DOB 3 Aug '48 A21 598 522
Maria Lopez DOB 19 Apr '53 A21 598 525
Petra Hilda Lopez DOB 29 Jun '51 A21 598 523
Enedelia Lopez A21 598 524 DOB A21 598 524

I sign below that the above statement was read to me and is correct.

Signed: Aniceto Lopez

Signed and subscribed before me this 13TH day of APRIL 1978

W. L. Woodruff, Jr.
W.L. Woodruff, Jr
General Attorney (Nationality)

Accurately transalated from
English into Spanish by
Alicia Martinez (INS) of
Brownsville, Tx