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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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Date: **JUN 06 2011** Office: SAN DIEGO, CA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1976).

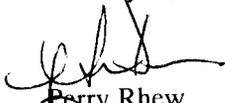
ON BEHALF OF APPLICANT:



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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the San Diego, California District Director (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father, who acquired citizenship at birth through the applicant's grandfather, who was born in the United States. The director determined that the applicant failed to establish the requisite physical presence of his father and grandfather in the United States and denied the application. On appeal, counsel asserts that the director erroneously disregarded sworn declarations and denied the application based solely on the lack of certain documentary evidence. Counsel claims that in the absence of contradictory evidence and no adverse credibility determination, the evidence previously submitted established the requisite physical presence of the applicant's father and grandfather sufficient for the applicant to acquire citizenship through his father under former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1976).

Applicable Law

The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has held 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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The applicant in this case was born in 1976 in Mexico. His father was also born in Mexico in 1953. Former section 301(a)(7) of the Act¹ is therefore applicable to this case.

Former section 301(a)(7) of the Act stated, in pertinent part, that individuals meeting the following description 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

Facts and Procedural History

The record in this case shows that the applicant was born on September 20, 1976 in Mexico to [REDACTED] who were married in Mexico on November 22, 1975.

¹ The director cited section 301(g) of the Act. However, section 301(a)(7) of the former Act was not redesignated as section 301(g) until 1978, after the applicant was born. See Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

The applicant's father was born in Mexico on March 25, 1953. The applicant's paternal grandfather, [REDACTED] was born in the United States on October 3, 1915. Neither the applicant's mother nor his paternal grandmother was a U.S. citizen.

The applicant bears the burden of proof in these proceedings. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). To have acquired citizenship at birth through his father and grandfather, the applicant must establish: 1) that his grandfather was physically present in the United States for at least 10 years before his father's birth in 1953 with at least five of those years after his grandfather's fourteenth birthday in 1929; and 2) that his father was physically present in the United States for at least 10 years prior to the applicant's birth in 1976, including at least five years after his father's fourteenth birthday in 1967.

In his August 26, 2010 decision, the director did not discuss the record in detail, but simply stated that "[t]he evidence submitted was reviewed and considered," but "failed to establish" the requisite physical presence of the applicant's father and grandfather in the United States. We review these proceedings *de novo*. See *e.g.*, *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). When viewed in the aggregate, the relevant evidence demonstrates the requisite physical presence of the applicant's father and grandfather in the United States.

Analysis

The record contains documents indicating that the applicant's grandfather was in the United States from his birth in 1915 through approximately 1928 and for at least five years between 1929 and 1953 when the applicant's father was born. The applicant submitted: the birth certificate showing that his grandfather was born in Ago, Arizona in 1915; the certificate of his grandfather's baptism on November 20, 1916 in Arizona; the certificate of his grandfather's younger brother's baptism on October 10, 1924 in Arizona; the Arizona certificate of the applicant's great grandfather's death on October 23, 1926 and a notice in [REDACTED] regarding the death of the applicant's great-grandfather, which states that he was survived by his wife and children who were living in Chandler, Arizona; the certificate of death of the applicant's grandfather's younger sister, [REDACTED] in Arizona on March 3, 1927; the school record of the applicant's grandfather's younger brother who attended kindergarten in Arizona in 1928; his grandfather's Border Crossing Card indicating his entries to the United States in 1939, 1940 and 1952; and his grandfather's certificate of death on May 3, 1997 stating that he lived in Arizona his entire life, worked on a ranch and never attended school.

The applicant also submitted the declaration of his aunt, [REDACTED] the eldest living sister of the applicant's father. [REDACTED] explained that when she was a child, her father, the applicant's grandfather, worked on farms and ranches in Arizona and would visit his family in Mexico for the weekend every couple of weeks when he would give the applicant's grandmother the money he had earned. The record also contains a Form I-213, Record of Deportable Alien,

regarding the applicant's father's interview with an immigration officer in 1971. The Form I-213 indicates that that officer spoke to the applicant's grandfather who stated that he resided in the United States from 1915 through 1927; worked on cotton harvests in the United States from 1933 to 1953; and then returned to live in the United States in 1953.

The director did not specifically address any of the relevant evidence or cite any reason to question the probative value and credibility of that evidence. When viewed in the aggregate, the record demonstrates, by a preponderance of the evidence, that the applicant's grandfather was physically present in the United States for at least 10 years prior to the applicant's father's birth in [REDACTED] including at least five years after his grandfather's fourteenth birthday in 1929. Accordingly, the applicant's father acquired citizenship at birth through the applicant's grandfather under former section 301(a)(7) of the Act.

The record also shows that the applicant's father had the requisite physical presence in the United States for the applicant to acquire citizenship through his father upon his birth in 1976. The relevant evidence includes: records showing that the applicant's father attended school in Arizona from 1966 through 1969 and documentation from the Arizona State Archives that school records are generally only retained for four years; the birth certificate of the applicant's father's younger brother, [REDACTED] showing that he was born in Arizona in [REDACTED]; the applicant's father's application for a social security card in Arizona dated June 10, 1969; the Form I-213 resulting from the applicant's father's interview with an immigration officer on March 3, 1971, which states that the applicant resided in Tucson, Arizona with his parents and had last been admitted to the United States as a citizen in 1968; a June 21, 1972 letter from the legacy Immigration and Naturalization Service (INS) regarding a request for an interview of the applicant's grandfather, father and aunt; the certificate of the applicant's father's first marriage in Arizona on March 14, 1973; and the March 18, 1974 U.S. District Court of Arizona judgment finding the applicant's father guilty of possession of marihuana and sentencing him to 18 months of imprisonment (from March 1974 to September 1975).

The record also contains INS documentation indicating that the applicant's father was placed in deportation proceedings on March 3, 1971 in Arizona and was ordered deported to Mexico on February 18, 1975. In his declaration, the applicant's father stated that the applicant's grandfather brought him to the United States when he was a young child and that he attended elementary, junior and high school in Arizona where he lived until 1975. The applicant's aunt also confirms that the applicant's grandfather brought the applicant's father to the United States soon after his birth and that the applicant's father lived and attended school in the United States.

The director did not specifically address any of the aforementioned evidence or cite any inconsistency or lack of credibility. Upon de novo review, the record demonstrates by a preponderance of the evidence that the applicant's father was physically present in the United States for at least ten years before the applicant's birth in 1976, including at least five years after the

applicant's father's fourteenth birthday in 1967. Accordingly, the applicant acquired citizenship at birth through his father under former section 301(a)(7) of the Act.

Conclusion

In certificate of citizenship proceedings, the applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has met his burden and established that he acquired citizenship at birth through his father who acquired citizenship at birth through the applicant's grandfather under former section 301(a)(7) of the Act, as in effect in 1976 and 1953 when the applicant and his father were born. The director's decision to the contrary will be withdrawn and the matter will be returned to the director for issuance of the applicant's certificate of citizenship.

ORDER: The appeal is sustained.