



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAY 10 2013**

Office: EL PASO, TX

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g) (1951).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, Texas, and 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 on December 1, 1951 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father was born in New Mexico on April 30, 1919. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship application, finding the applicant had failed to demonstrate that his father resided in the United States for the statutorily required period of time. On appeal, the applicant maintains that his father resided in the United States as required. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. 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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1951. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

Section 201(g) of the Nationality Act states in pertinent part 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.

In order to acquire U.S. citizenship at birth, the applicant must therefore establish that his father resided in the United States for 10 years prior to 1951, five of which were after the age of 16 (after 1935).

The record contains, in relevant part, a copy of the applicant's father's delayed birth certificate and baptismal certificate, documents relating to the applicant's brother's citizenship claim, a statement from the applicant's uncle indicating that the applicant's father moved to Mexico when he was 20 years old, a statement from the applicant's mother indicating that she married the applicant's father in 1948 and that he lived in the United States all his life, a social security earnings statement indicating the applicant's father's employment income in 1951-1955, a statement from Mrs. [REDACTED] stating that the applicant's father lived with her in [REDACTED] from 1947 until 1955, and a 1953 W-2 Withholding Statement.

Page 3

The AAO finds that the evidence in the record fails to establish that the applicant's father resided in the United States for 10 years prior to 1951, five of which were after 1935. The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, 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.)

There are important discrepancies between the statements made by the applicant's mother, the applicant's uncle and Mrs. [REDACTED]. The applicant's mother states that she moved to the United States with the applicant's father in 1947 and that they were married in 1948, yet Mrs. [REDACTED] does not mention the applicant's mother and states that the applicant's father was living with her from 1947 to 1955. The applicant's uncle states that the applicant's father lived in the United States until he was 20, but then explains that he lived in the United States while the applicant's mother remained in Mexico. His statement does not contain critical dates and is generally vague. There is therefore good reason to reject the applicant's contention that his father resided in the United States for ten years prior to 1951. The evidence suggests that the applicant's father was employed and present in the United States prior to 1951, but the record does not establish that he resided in the United States for ten years as required by section 201 of the Nationality Act. Thus, the applicant cannot establish that he acquired U.S. citizenship at birth through his father.

“There 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 applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.

ORDER: The appeal is dismissed.