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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

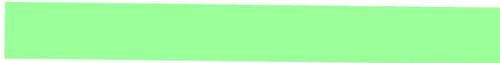


DATE: **MAY 10 2013**

OFFICE: HARLINGEN, TX



IN RE:



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

ON BEHALF OF APPLICANT:



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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Harlingen, Texas (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born out of wedlock in Mexico on September 11, 1968, but was subsequently legitimated upon the marriage of his parents in 1972. The applicant's father was born in Mexico and derived U.S. citizenship at birth through a parent. The applicant's mother was born in Mexico and became a naturalized U.S. citizen on May 16, 1997, when the applicant was 28 years-old. The applicant presently seeks a certificate of citizenship under former section 301(a)(7) of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

In a decision dated May 8, 2012, the director determined the applicant had failed to establish that his father was physically present in the United States for 10 years prior to the applicant's birth, 5 years of which were after the applicant's father turned 14 years-old, as required by former section 301(a)(7) of the former Act. The application was denied accordingly.¹

Through counsel, the applicant asserts on appeal that affidavit and documentary evidence establish that his father met the physical presence requirements at section 301(a)(7) of the former Act prior to the applicant's birth. Counsel submits affidavits from family members to support his assertions. The record also contains a copy of the applicant's father's certificate of citizenship, and U.S. Social Security Administration information for the applicant's father.

Counsel also requests on appeal that the affiants be allowed to testify orally in the applicant's case, so that they can be directly examined and cross-examined. The request will be denied. Under the regulation at 8 C.F.R. § 103.3(b), the Service has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The record in this case is voluminous and adequately addresses the pertinent facts and legal issues. Accordingly, the request for oral argument is denied.

The entire record was reviewed and considered in rendering a decision on the appeal.

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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1968. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.²

¹ The record also contains two Form N-600 applications denied by the Service in June 1977 and in May 2007. The June 1977 decision was not appealed. An appeal of the May 2007 decision was dismissed by the AAO as untimely filed on October 31, 2007.

² Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

Under section 301(a)(7) of the former Act the following shall be citizens of the United States at birth:

[A] person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years

To establish that his father was physically present in the United States for 10 years before the applicant's birth on September 11, 1968, at least 5 years of which were after his father turned 14 on February 28, 1955, the applicant submits: an alien laborer's identification card reflecting that the applicant's father was admitted into the United States at Eagle Pass, Texas on September 20, 1961, and reflecting that his father's home address at the time was in Mexico; his father's certificate of citizenship, dated November 13, 1972 and reflecting the applicant's father resided in Mexico; U.S. Social Security Administration evidence reflecting that the applicant's father's employment history in the United States began in 1973; and affidavits from family members attesting to the applicant's father's physical presence in the United States.

The AAO finds that the documentary evidence fails to establish that the applicant's father was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. The Social Security Administration evidence does not establish the applicant's father's physical presence in the United States prior to 1973. Moreover, the applicant's father's certificate of citizenship was not issued until 1972, and reflects the applicant's father resided in Mexico at that time. At best, the applicant's father's alien laborer's identification card would establish his father's physical presence in the United States for 7, rather than 10 years prior to the applicant's birth. However, the other documentary evidence does not support this conclusion. Moreover, the record also contains a denied Form N-600 signed by the applicant's father and filed on May 24, 1977, in which the applicant's father clearly states that he did not begin residing in the United States until 1972.

Several affidavits from family members attest to the applicant's father's physical presence in the United States during various time periods. The applicant's father's aunt, [REDACTED], states in a June 11, 2005 affidavit that she began living in La Grulla, Texas around 1950; that the applicant's father began accompanying his brothers to work in the fields in Texas when he was 8 years old; and that she offered food and housing to them when they were in Texas. The affidavit is vague and lacks detail regarding the exact dates and circumstances of the applicant's father's physical presence in the United States. Furthermore, the record lacks documentary evidence establishing that [REDACTED] lived in Texas at any time.

Affidavits from the applicant's other family members are also uncorroborated by documentary evidence. Moreover, the affidavits contain material inconsistencies with regard to the dates that the applicant's father was in the United States. The applicant's father's cousin, [REDACTED] initially states in an undated affidavit submitted with the applicant's Form N-600, that he and the applicant's father worked in the fields and resided with their aunt [REDACTED] "during approximately

the date of 1951.” He states in a June 22, 2012 affidavit submitted on appeal, however, that he and the applicant’s father worked in the fields for 8 to 9 months at a time between 1950 and 1952.

The applicant’s father’s brother, [REDACTED] initially states in an undated affidavit that his brothers and cousins worked in the fields of La Grulla and other cities in Texas, and that from 1950 or 1951 until 1971 he would sometimes “tag along” with them. In a June 22, 2012 affidavit, however, he states that from 1951 until 1972 he worked in Texas picking crops with the applicant’s father and their other family members.

The applicant’s father’s sister, [REDACTED] states in an affidavit signed January 21, 2012, that the applicant’s father worked with their brothers in La Grulla and other cities “around the years 1950-1952”; that their aunt took care of them; and that she does not remember anything else because she was very young at the time. She states in a second affidavit signed on June 22, 2012, that from about 1951 to about 1972, the applicant’s father and her other brothers worked in the fields for periods of 6 to 8 months.

Similarly, the applicant’s father’s cousin, [REDACTED] initially states in an undated affidavit submitted with the applicant’s Form N-600, that in 1952 he and the applicant’s father began going to La Grulla, Texas to work in the fields, and that during that time they stayed at their late aunt [REDACTED] home. He states in a second affidavit signed on June 22, 2012, that between about 1951 until 1972, he, the applicant’s father, and other family members worked for 6 to 8 months every year in the Valley in Texas.

The applicant’s father’s cousin, [REDACTED] states further in an undated affidavit that “in the year 1952”, the applicant’s father went along with him and other family members to work in the United States for “many weeks and months,” and that their late aunt provided them with shelter and a home. He states in a second affidavit signed on June 22, 2012, however, that for several years, beginning around 1951, the applicant’s father worked in the United States for 7 to 8 month periods.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant’s knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the affidavits contain material inconsistencies with one another and with documentary evidence contained in the record. The affidavits therefore have diminished evidentiary weight.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.