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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

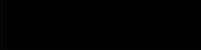


U.S. Citizenship  
and Immigration  
Services

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FILE: 

Office: HARLINGEN, TX

Date: **OCT 21 2009**

IN RE: 

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201 of the  
Nationality Act of 1940; 8 U.S.C. § 601.

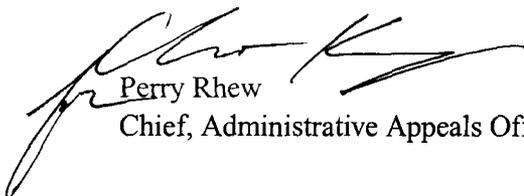
ON BEHALF OF APPLICANT:



**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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on July 18, 1943. His parents, as indicated on his birth certificate, were [REDACTED] and [REDACTED]. The applicant's father was born in Texas on July 25, 1915. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Mexico in 1938.<sup>1</sup> The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the application finding that the applicant had failed to establish that his father had the required residence in the United States. On appeal, the applicant, through counsel, maintains that his father resided in the United States from birth until 1937. The applicant claims that the director erred in not properly considering the evidence submitted. See Brief in Support of 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. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1943. The Immigration and Nationality Act (the Act) went into effect on December 24, 1952. The Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601, is therefore applicable in this case.<sup>2</sup>

Section 201 of the Nationality Act states, in pertinent part:

The following shall be nationals and citizens of the United States at birth:

\* \* \*

(g) 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 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

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<sup>1</sup> The AAO notes some discrepancies in the name attributed to his mother in his birth certificate ([REDACTED]) and his parents' marriage certificate ([REDACTED]). There are also some discrepancies with respect to the applicant's maternal grandparents' names. The discrepancies appear to be recording errors, and harmless to the applicant's claim.

<sup>2</sup> The AAO notes that the field office director's decision refers to section 301(g) of the Act, 8 U.S.C. § 1401(g).

possessions by the time he reached the age of sixteen years, 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.<sup>3</sup>

The applicant must thus establish that his father resided in the United States for 10 years prior to July 1943 (the applicant's date of birth), five of which were after July 1931 (the applicant's father's 16<sup>th</sup> birthday).<sup>4</sup>

The record indicates that the applicant's father was born and baptized in the United States in 1915. The record contains the applicant's paternal grandfather's draft card, dated 1918, the applicant's paternal uncles' birth certificates dated in 1920 and 1923, and 1930 census records. Further, the record contains affidavits from the applicant and from his mother stating that the applicant's father resided in the United States until 1937. The AAO notes that the applicant's parents were married in Mexico in 1938, and that the applicant was born there in 1943.<sup>5</sup>

In *Savorgnan v. United States*, 338 U.S. 491, 505, (1950) the U.S. Supreme Court defined the term "residence" as the principal dwelling place of a person, or their actual place of general abode, without regard to intent. When determining the issue of residence, "[t]he inquiry is one of objective fact, and one's intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material." See *Alcaarez-Garcia v. Ashcroft*, 293 F.3d 1155, 1157 (9<sup>th</sup> Cir. 2002)(citations and quotations omitted).

The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant's father resided in the United States for five years after his 16<sup>th</sup> birthday in 1931. The applicant claims that his father resided in the United States until 1937. In support of his claim, he submits the testimony of the applicant's uncle, his own and his mother's affidavits, a copy of his grandfather's World War I draft card, and a copy of 1930 census records listing his father's family. The applicant maintains that his father did not attend school, that he worked in agriculture and that he did not have a social security number.

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<sup>3</sup> Section 201(h) of the Nationality Act further states that "[t]he foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934."

<sup>4</sup> Section 201(i) of the Nationality Act, introduced in 1946, provided for transmission of U.S. citizenship from a parent who had resided in the United States for five years after the age of 12. This provision was only applicable to children of parents who served in the U.S. armed forces during World War II. There is no indication in the record that the applicant's father served in the military.

<sup>5</sup> The record also contains a brief addressing the issue of retention of U.S. citizenship, and an explanatory affidavit from a Mexican attorney addressing the requirements for correcting an error in a birth or marriage registration.

Although the record suggests that the applicant's father was present in the United States for 10 years prior to the applicant's birth (in 1943), the record does not establish that he resided here for five years after 1931. The only relevant evidence submitted by the applicant in this regard is his uncle's testimony. The AAO notes that neither the applicant nor his mother has personal knowledge of the applicant's father's residence between 1930 and 1937. The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that "when good reasons appear for rejecting [a claim of derivative citizenship] 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). The applicant has not submitted any other evidence of his father's residence after 1930. Specifically, the applicant did not submit his siblings' birth certificates, although there is an indication that they were born in Mexico. The AAO must therefore find that it is not "more likely than not" that the applicant's father resided in the United States for the required five years after his 16<sup>th</sup> birthday. The AAO finds that the applicant has failed to establish his father's required residence in the United States.

Having found that the applicant did not establish that his father resided in the United States as required, the AAO need not address the issue of the applicant's retention of U.S. citizenship.

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 applicant has not met his burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.