U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

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FILE: [redacted] Office: Philadelphia Date: MAR 12 2001

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant alleges to have been born on July 4, 1966, in Mexico. The record fails to contain the applicant's birth certificate. The applicant was previously determined to be an alien in deportation proceedings and he was removed from the United States on October 27, 1988 and on October 1, 1992. The applicant alleges that his father was named [redacted] and he was born in Mexico. This assertion is unsupported in the record. The applicant alleges that his mother is named [redacted] who was born in El Paso, Texas in 1928. This assertion is unsupported in the record. The record is devoid of evidence that the applicant's parents ever married each other.

The applicant claims that he acquired United States citizenship through his alleged mother under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g) or under § 309 of the Act, 8 U.S.C. 1409.

The district director determined the record failed to establish that the applicant had acquired U.S. citizenship through his alleged United States citizen parent and that such parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 301(g) of the Act at the time of the applicant's birth.

On appeal, the applicant disagrees with the decision and submits a nearly illegible copy of an uncertified birth certificate containing writeovers. The applicant alleges that the document is his birth certificate and he is the son of [redacted]. Absent a report from the Service's Forensic Document Laboratory certifying that the original copy of the birth certificate submitted on appeal is a true and authentic copy, it will not be considered in this proceeding.

Section 301 of the Act in effect prior to November 14, 1986 provides, in pertinent part, that:

> (g) 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 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

Section 12 of the Act of November 14, 1986, (Pub.L. 99-653, 100 Stat. 3657), shortened the required period of United States residence for the citizen parent amendments substituted "five years, at least two" for "ten years, at least five", effective for persons born on or after November 14, 1986.

Section 309(c) of the Act states, in pertinent part, that:

> (c) Notwithstanding the provision of subsection (a) of this §, a person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

Absent such supportive evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that he is the son of Francisca Benevidez, the United States citizen named on his application, or that his true mother was a United States citizen at the time of the applicant's birth or that she was physically present in the United States for the required period prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.