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]

Public Copy

FILE: [redacted] Office: San Antonio Date: MAR 16 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:

[redacted]

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The record reflects that the applicant was born on April 17, 1961, in Mexico. The applicant's father, [redacted], was born in Mexico in 1913 and became a naturalized U.S. citizen in May 1992 and after the applicant's birth. The applicant's mother, [redacted], was born in April 1929 in the United States. The applicant's parents married each other on June 7, 1944. The applicant claims that he acquired United States citizenship at birth under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined the record failed to establish that the applicant's United States citizen 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 Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), at the time of the applicant's birth and denied the application accordingly.

On appeal, counsel states that the Service committed an abuse of discretion by relying solely on an affidavit taken in 1963 from the applicant's mother. On September 11, 2000, counsel states that a written brief would follow within 30 days. More than 30 days have elapsed since the appeal was filed and no additional documentation has been entered into the record. Therefore, a decision will be entered based on the present record.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986 provides, in pertinent part, that 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.

The record contains a sworn statement from the applicant's mother dated August 14, 1963, in which she stated that she lived in the United States from birth to approximately age 9, 1938 and then went to Mexico and lived there with her parents. She lived in Mexico continuously from 1938 until January 1963 and merely visited the United States during those years.

The record reflects that the applicant was issued an immigrant visa and was lawfully admitted for permanent residence on March 18, 1971 as the child of a United States citizen. The applicant's mother indicated on her son's immigrant visa petition revalidated at the American Consulate in Monterrey, Mexico and signed under oath in 1970 that she resided in Gomez Palacio, Mexico from 1944 (when she was approximately 15 years old) to 1962. She also submitted visa applications for three other children. Based on the fact that the applicant's mother failed to have the required physical presence in the United States, the American Consulate issued the applicant an immigrant visa on March 17, 1971.

The statements provided with the present application that the mother returned to the United States in 1950 where she lived until 1954 and then alternated living between Mexico and the United States thereafter only contradict her statements given under oath to Service officers in 1963 and to American Consular officers in 1970. The information provided by the applicant's mother on the applicant's immigrant visa petition in April 1970 is especially significant because, (1) a United States citizen does not require a visa to enter the United States, (2) she was seeking a benefit for her son without being under stressful circumstances and (3) consular officers are meticulous in trying to avoid issuing such visas to qualified U.S. citizens.

Absent any additional probative evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his mother 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.