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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



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FILE: [Redacted]

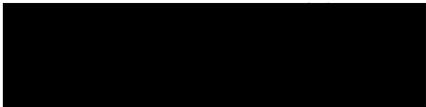
Office: San Antonio

Date:

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:



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 a subsequent appeal was dismissed by the Associate Commissioner for Examinations. A motion to reopen was denied and the matter is before the Associate Commissioner on a second motion to reopen. The motion will be denied and the order dismissing the appeal will be reaffirmed again.

The record reflects that the applicant was born on October 24, 1956, in Mexico. The applicant's father, [REDACTED], was born in the United States in 1919. The applicant's mother, [REDACTED] was born in 1928 in Mexico and never claimed to be a United States citizen. The applicant's parents married each other in December 1946. 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. The Associate Commissioner affirmed that decision on appeal and again on a motion to reopen.

The Service has based its decisions on an affidavit from the applicant's father contained in the file of the applicant's sister, [REDACTED] who was born in December 1967. The applicant's father stated in that April 1982 affidavit that he had resided part of the time in the United States and part of the time out of the United States from 1946 to 1949. The applicant's father also submitted statements from his employer, [REDACTED] reflecting that he was employed from 1960 to 1980 and from a co-worker which placed him in the United States no earlier than 1951. The applicant's father testified that he started living in the United States in 1946, 10 years prior to the applicant's birth and he did not live in the United States full-time in any of those 10 years.

On appeal and on both subsequent motions, counsel has submitted additional affidavits from the applicant's father which are unsupported by probative evidence and only contradict his 1982 statement by asserting that he has lived his entire life in the United States since the age of 13. The present uncertified copy of an affidavit dated April 27, 1980 is from [REDACTED] (age 60 at that time) who alleges to have known the applicant's father since the applicant's father was 15 years old (1934) and that they had worked together in 1940 in La Pryor, Texas. Mr. [REDACTED] states that when they left that job they went to work together in Uvalde, Texas and that the applicant's father worked there for approximately 10 years and then moved to Colorado.

A question which immediately arises in reviewing this matter is why the applicant, as the eldest child, did seek some evidence of United States citizenship along with his other five siblings in 1982 instead of waiting until 1994 to file the present application. The record indicates that the applicant did not immigrate until 1983 and the other five siblings immigrated at the same time in 1969. Another unanswered question is why the applicant failed to apply for a United States passport at the American Consulate abroad when he immigrated in 1983 at approximately the same time (in 1982) his five siblings were applying for certificates of citizenship in the United States.

Section 301, effective for persons born on or after November 14, 1986 of the Act, provides in part, that the following shall be nationals and citizens of the United States at birth:

(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 5 years, at least 2 of which were after attaining the age 14 years...

The unsupported affidavit submitted on motion again only contradicts the statements made by the applicant's father in 1982 regarding his physical presence in the United States. Absent such supportive evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his father 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 of establishing his father had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed. The order of June 9, 2000 dismissing the appeal is reaffirmed.