E2

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarrant invasion of pe

[redacted]

FILE: [redacted] Office: Houston Date: JUN 05 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on February 15, 1975, in Mexico. The applicant's father, , was born in the United States in October 1920 and died in June 1992. The applicant's mother, was born in 1945 in Mexico and never had a claim to United States citizenship. The applicant's parents married each other on December 31, 1960. The applicant claims that he acquired United States citizenship at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The district director denied the application after concluding that the record failed to establish that, at the time of the applicant's birth, the applicant's United States citizen parent (hereafter referred to as Mr. 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 section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

On appeal, counsel states that the Bureau (1) never attempted to get clarification of the issues it now claims make the mother's affidavit suspicious; (2) never attempted to contact the applicant's mother to ask where Mr. lived during the period after their marriage and before Mr. returned to the United States; (3) never asked for the specific month in which Mr. either entered or left the United States; and (4) never addressed specific questions presented by counsel.

On appeal, counsel further states that the Bureau incorrectly compared Mr. earnings to the "national average", not his earning capacity, as the issue in determining Mr. presence in the United States,

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 applicant alleges that he was lawfully admitted for permanent residence on December 31, 1980. The record is devoid of that evidence for review. The application indicates that the applicant's mother resides in Houston, Texas, but the dates of her residence in Texas are unstipulated on the application. The record contains a copy of the biographic page of the mother's passport issued on January 10, 1980, which includes the photo of six children. It may

be presumed that the mother and the children immigrated during the year 1980, however, the record is devoid of that evidence.

It should be noted that if the persons indicated by that passport were admitted to the United States based on immigrant visas issued abroad, American consular officers would have carefully reviewed the immigrant visa applications to determine if they had a claim to U.S. citizenship because U.S. citizens are ineligible to receive immigrant visas.

The record contains an uncertified copy of what is alleged to be Mr. [redacted] social security earnings, with pertinent earnings dating from 1968 through 1974, the year preceding the applicant's birth. The record is silent as to why a certified copy of Mr. [redacted] social security earnings cannot be provided. There is no other documentary evidence that Mr. [redacted] resided in the United States at any time prior to the applicant's birth other than the dates listed on the uncertified social security document. The applicant's wife, who states that she resided in Mexico until 1980, indicated in her statement that she knew that Mr. [redacted] resided in Houston from 1959 until their marriage in 1960. This statement is not corroborated by other documentation.

The record does not prove conclusively that Mr. [redacted] was present in the U.S. for 10 years prior to the applicant's birth. The letter from Mr. [redacted] employer, [redacted] indicates that Mr. [redacted] was employed by that firm from November 17, 1972 to April 22, 1983. This amounts to a maximum of 2 years and 3 months physical presence in the United States prior to the applicant's birth in February 1975. While his stated earnings in all years on the uncertified social security printout are questionable as to whether they represent a complete year, the earnings for 1974 are of particular concern as they are considerably lower than the earnings for each of the prior six years. On appeal counsel noted several pieces of information that he claims the Bureau failed to request, however, he also failed to provide that information on appeal to substantiate the applicant's claim.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in this instance 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 a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

Should this matter appear before the AAO again, it must be supported by the complete immigrant visa files of the applicant and his mother.

ORDER: The appeal is dismissed.