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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

[Redacted]

FILE: [Redacted]

Office: San Diego

Date:

APR 25 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]

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.

Identifying 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 District Director, San Diego, California, 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 October 25, 1970, in Mexico. The applicant's father, [REDACTED] was born in Mexico in September 1952 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED], was born in Mexico in January 1954 and acquired United States citizenship at birth through her parents. The applicant's parents married each other on November 14, 1968, and that marriage was dissolved on January 23, 1979. The applicant was lawfully admitted for permanent residence on November 12, 1970.

The applicant alleges that his parent's marriage was not valid because his mother was 14 years and 10 months old when she married and without her parent's consent. He, therefore, claims eligibility for a certificate of citizenship based upon § 309(c) of the Act, 8 U.S.C. 1409(c), as a child born out of wedlock to a United States citizen mother.

Failing to receive evidence that the parent's marriage was not valid under Mexican law, the district director adjudicated the application under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), and considered the applicant to be a legitimate child born abroad of one U.S. citizen parent and one alien parent.

The district director determined that 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.

On appeal, counsel argues that the marriage of the applicant's parents was not legal, but fails to provide any authority in support of that argument.

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 establishes that the applicant's parents were married at the time of his birth and his mother was 16 years and 9 months old when he was born. Therefore, it is impossible for her to have been physically present in the United States for 5 years after the age of 14.

Further, the record is devoid of any evidence to reflect that the applicant has ever sought to obtain a certificate of citizenship or a U.S. passport prior to filing the present application on November 4, 1998, at the age of 28.

Absent evidence that his parent's marriage was void from the beginning, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his U.S. citizen 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 and the appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.