



*EL*

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



**Public Copy**

**JUN 18 2001**

FILE:

Office: Tucson (PHO)

Date:

IN RE: Applicant:



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

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

*identification data deleted to prevent clearly unwarranted invasion of personal privacy.*

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, Phoenix, Arizona, 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 March 8, 1948, in Mexico. The applicant's father, Alfredo Fragoso, was born in Mexico in October 1917 and never had a claim to United States citizenship. The applicant's mother, Ramona Burgueño, was born in the United States in December 1919. The applicant's parents married each other in April 1940. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (NA 1940), based on her claim that she acquired U.S. citizenship at birth through her mother.

The district director determined the record failed to establish that the applicant's United States citizen parent had resided in the United States or its outlying possessions for a period of 10 years, at least 5 of which were after the age of 16 years. The district director then denied the application accordingly.

On appeal, the applicant states that her mother, who is in her 80's, does not have a precise memory of dates, facts, places, names, events, etc. The applicant states that even if there was no evidence that her mother lived in the United States from 1943 to 1948, she was 24 years old in 1943 and had already spent the required 5 years residing in the United States after attaining the age of 16 years.

The citizenship of a person born outside the United States is determined by the statutes and law in existence at the time of the person's birth. Matter of B--, 5 I&N Dec. 291 (BIA 1953), overruled on other grounds; Matter of M--, 7 I&N Dec. 646 (BIA 1958); Montana v. Kennedy, 278 F.2d 68 (7th Cir. 1960), aff'd, 366 U.S. 308 (1961). Section 201(g) of NA 1940 was in effect at the time of the applicant's birth.

Section 201 of NA 1940 states, in pertinent 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, resided in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of sixteen years...

The retention requirements in effect at the time of the applicant's birth under Section 201(g) and (h) of NA 1940, stipulated that a citizen child born abroad to one U.S. citizen and one alien parent, in order to retain United States citizenship, must demonstrate 5 years residence in the United States between ages 13 and 21. The

Act of 1952 stipulated that such citizen born abroad must demonstrate 5 years of continuous physical presence in the United States between the ages of 13 and 28 in order to retain citizenship. The Act of October 27, 1972, extensively liberalized the retention requirements extending back to birth abroad after May 24, 1934, and reduced the period of continuous physical presence to 2 years. The retention requirements were eliminated by an amendment to the Act effective October 10, 1978. Persons born on or after October 10, 1952, are relieved of the necessity of complying with any retention requirements.

The applicant became a lawful permanent resident in October 1959 and appears to have satisfied the retention requirements. The applicant married in May 1971 and returned to Mexico to live. She abandoned her residence and obtained a Border Crossing Card. The record is silent as to whether she ever applied for a United States passport abroad or in the United States or why she waited until November 1995 to apply for a Certificate of Citizenship especially when sources of information would have been more readily available at an earlier date.

On March 6, 1997, the applicant and her mother were interviewed by a Service officer. The applicant indicated on her application that her mother had resided in the United States from 1919 to 1934, from 1943 to 1948 and from 1980 to 1986. The applicant's mother indicated that she divided her time between her parents who resided in Agua Prieta, Sonora, Mexico, and her grandparents who resided in Douglas, Arizona, from 1943 to 1948. It is also noted that the applicant's brother, who was born on December 24, 1940, indicated no residence in the United States for his mother between 1932 and 1959 on his Application for Certificate of Citizenship (Form I-600) filed in August 1962. It can be presumed that memories were much sharper regarding certain facts and locations approximately 35 years ago when that application was filed.

The applicant resubmits a letter from [REDACTED] and [REDACTED] who state that they had known the applicant's mother since 1938 and she lived in Los Angeles, California. The applicant's mother has never claimed in the record to have resided in the United States in 1938. The record indicates that the applicant's mother resided in the United States from birth until either 1932 or 1934, depending which Form I-600 is consulted, when she was either 13 or 15 years old.

Absent additional probative evidence, the applicant has not shown that she acquired United States citizenship at birth because she has failed to establish that her mother resided 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 her mother resided in the United States a total of 10 years, 5 of which were after the age 16. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.