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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Houston

Date: AUG 21 2002

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)

IN BEHALF OF APPLICANT: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on August 12, 1939, in Mexico. The applicant's father, [REDACTED], was born in Mexico in 1910. The applicant's mother, [REDACTED] was born in September 1919 in Houston, Texas. The applicant's mother married [REDACTED] Mexico on March 16, 1935. The application was adjudicated under the provisions of section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The acting 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 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 under the provisions of section 301(g) of the Act. The applicant provided no comments on appeal.

Since the applicant was born in 1939, he was not subject to the provisions of section 301(g) of the Act. The acting district director's decision will be withdrawn, and the matter will be adjudicated *de novo*.

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). Although subsequently repealed, section 1993 of the Revised Statutes (R.S. section 1993), which incorporated the Act of Feb. 10, 1855 (10 Stat. 604), was in effect at the time of the applicant's birth in 1939.

R.S. section 1993 was amended by the Act of May 24, 1934 (48 Stat. 797) which provided, in part, that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of

allegiance to the United States of America as prescribed by the Immigration and Naturalization Service.

Before the Nationality Act of 1940 (NA 1940), there was no definition of the term "residence" and no specification as to its nature or duration. The administrative authorities read the statute generously, and ruled that a temporary abode in the United States by the citizen parent or parents was sufficient compliance, even though such abode was concededly a temporary visit. It is the settled administrative policy that the prior residence requirement is satisfied for persons born prior to January 13, 1941, effective date of NA 1940, if the citizen parent or parents had a temporary sojourn in the United States prior to the child's birth. Matter of V--, 6 I&N Dec. 1 (A.G. 1954), held that two visits to the United States by a United States citizen parent prior to the birth of her children, one for 2 days and the other for a few hours, are held to satisfy the residence requirement.

The record contains the mother's delayed certificate of birth and her baptismal certificate reflecting that she was baptized on October 22, 1919, in Houston, Texas. The record also contains her employment records which reflect that she commenced working in 1937. Following Matter of V--, this evidence establishes that the applicant's mother satisfied the residence requirement of RS section 1993.

The record also contains the application of the applicant's brother, [REDACTED] who was born on June 15, 1937. Juan was subject to the same provisions as the present applicant. Juan's application was approved in June 1958, and he was issued a certificate of citizenship.

The two applications indicate that [REDACTED] arrived in the United States in 1944 as U.S. citizens. The applicant, [REDACTED] was 5 years old at entry. A third brother [REDACTED] who was born after January 13, 1941 under NA 1940, had to obtain a Mexican passport and was admitted as a 4(c) immigrant (unmarried child born in a quota country). [REDACTED] resided in the United States for the required period of five years prior to their 18th birthdays, thereby satisfying the retention requirements of RS section 1993 in effect at the time of their births.

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 shown that he acquired United States citizenship at birth under RS section 1993. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained. The acting district director's decision is withdrawn and the application is approved.