



PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Justice
Immigration and Naturalization Service

E2

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



FILE  Office: Houston

Date: DEC 17 2002

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: 

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 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 that 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 District Director, Houston, Texas, 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 April 5, 1953, in Mexico. The applicant's father, [REDACTED] was born in Mexico in February 1919 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] hereafter referred to as [REDACTED] was born in October 1921 in the United States. The applicant's parents married each other on June 20, 1942. The applicant claims that she 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 applicant last entered the United States as a nonimmigrant visitor on February 8, 1999, with a Border Crossing Card.

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 section 301(g) of the Act, at the time of the applicant's birth.

On appeal, counsel states that the evidence submitted with the application demonstrates that Francisca possessed sufficient physical presence in the United States to transmit citizenship. Counsel argues that the Service continues to carry the burden of proof on the issue of alienage. Counsel asserts that the child, in rebutting the presumption of alienage established as a result of the child's birth abroad, is successful when "reasonable support" for the claim is provided. Counsel states that the fact that Francisca's father owned land in the United States until he sold it in 1952 creates a presumption that Francisca also remained in the United States after reaching the age of 14 years in 1935 until 1939 when she was an unmarried minor.

Counsel states that Seven Sisters did not have a school and that two teachers gave lessons to the Campos Family. It is noted that [REDACTED] provided two affidavits for review. In the first affidavit sworn to on October 27, 1999, Felicidad states that, "Francisca lived at Seven Sister, (sic) Texas, while taking care of our sister Maria and our brother Guadalupe when they were going to school in Freer, Texas, from 1935 to 1944." In the second affidavit sworn to on August 26, 2000, [REDACTED] states that, "I swear that at the Ranch Seven Sisters, [REDACTED] were teachers and gave lessons to the Campos Family." Freer, Texas, is approximately 15 miles south southeast of Seven Sisters. Further, the applicant herself states that [REDACTED] lived in San Diego, Texas, from the time of her birth until 1942. San Diego, Texas, is 25 miles east of Freer and 10 miles west of [REDACTED]. The Associate Commissioner finds the two affidavits by [REDACTED] and the one by the applicant contradictory and place Francisca in two completely different locations during the same period of time.

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 applicant alleges that Francisca lived in the United States from her birth in 1921 until 1942 and then from 1944 until 1950. After 1950 she lived periodically in the United States until she died in 1998. The record is devoid of any official U.S. records relating to Francisca during that period of time.

It is noted that the applicant filed the present application in December 1999, after the death of Francisca in March 1998. Prior to that date, the applicant used a nonimmigrant Border Crossing card to enter the United States. The record is silent as to why she did not seek a certificate of citizenship, or apply for a U.S. passport at a U.S. consulate in Mexico, prior to Francisca's death when the [REDACTED] testimony would have been germane to the matter. Instead she used a nonimmigrant Border Crossing card as evidence that she was a citizen of Mexico. It is further noted that Francisca is listed as a "Norteamericano" on the applicant's Mexican birth certificate and on Francisca's marriage certificate. Hence, the applicant should have been aware that she had a claim to U.S. citizenship.

Counsel states that the Service's determination that affidavits and sworn statements are not acceptable is not supported by any law. The affidavits in the record contain approximations of Francisca's alleged physical presence in the United States, i.e., 1921-1944, 1935-1944, 1935-1942, 1944-1950 or 1942-1953. None of the affiants have submitted verifiable evidence to establish that they were in a specific location during those years which would support their statements. Further, none of the identifying documentation relating to Francisca, her voter's registration, Medicare card and Texas Identification Card, was issued prior to March 1, 1996.

The applicant was issued a Border Crossing Card on August 7, 1968, at a time when Francisca was still alive. In order to get such a document, a citizen of Mexico must present an application supported by a Forma Trece (Form 13) Mexican Identity Card which is obtained by presenting the person's Mexican birth certificate to local officials. Again, the record is devoid of any explanation as to why the applicant did not try to apply for a certificate of citizenship

some 30 years earlier rather than applying for a Border Crossing Card with its limitations and restrictions.

Absent verifiable and probative evidence that Francisca was actually physically present in the United States for the required amount of time, the applicant has failed to show that she acquired United States citizenship at 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 had been 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.

ORDER: The appeal is dismissed.