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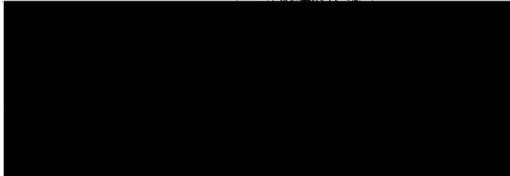
U.S. Department of Justice

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

Office: Houston

Date: **DEC 18 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: Self-represented

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 Acting 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 September 22, 1962, in Mexico. The applicant's father, Salvador Coronado, was born in Mexico in June 1932. The applicant's father never had a claim to United States citizenship. The applicant's mother, Juanita Pineda, was born in January 1930 in the United States. The applicant alleges that his parents married each other on July 11, 1962, however that evidence is not present in the record. 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 acting 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, the applicant states that there were many errors in his case and he discusses his mother's names as used on various documents in the record. He submits a Form G-325-A which his mother filled out in December 1996 without indicating a date or place of her marriage to the applicant's father. The applicant suggests that this indicates that he was born out of wedlock.

The applicant also included a motion to reopen removal proceedings. Removal proceedings are not within the jurisdiction of the Associate Commissioner. This motion must be addressed in another proceeding.

Although the record fails to contain a marriage certificate for the applicant's parents, the mother's death certificate reflects that she was married at the time of her death on January 14, 2000. The applicant's birth certificate also indicates that the parents were married in a civil ceremony and that his birth was legitimate.

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 does not contain any documentary evidence other than the mother's birth and baptismal certificates to prove that she was physically present in the United States 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 that his 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.