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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: Dallas

Date:

DEC 24 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 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, Dallas, 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 March 23, 1986, in Mexico. The applicant's father, [REDACTED] was born in Mexico in August 1967 and never had a claim to United States citizenship. The applicant's mother, [REDACTED] was born in June 1967 in the United States. The applicant's parents married each other on December 11, 1985, and divorced on June 6, 1994. 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 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 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 it is hard for her to get her citizenship. She indicates that her mother is a U.S. citizen who has lived in the United States all of her life. The record contains a biographical list of the mother's addresses and residences in the United States.

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 mother was 18 years, 7 months and 20 days old when the applicant was born during a temporary visit to Mexico. Therefore, she could not have satisfied the requirement of being physically present in the United States for 5 years after the age of 14.

The record reflects that the applicant was brought into the United States without inspection in June 1986. It was unfortunate that the mother did not present the applicant for admission at the Port of Entry in El Paso because section 211 of the Act, 8 U.S.C. § 1181, provides for the admission of such a child born abroad to a U.S.

citizen and covers the birth of a child abroad whose U.S. citizen parent is unable to satisfy the physical presence requirement at the time of the child's birth.

8 C.F.R. 211.1(7)(b) provides, in part, that a waiver of the visa required in paragraph (a) of this section shall be granted without fee or application by the district director, upon presentation of the child's birth certificate, to a child born during the temporary visit abroad of a mother who is a national of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission upon the first return of the parent as a permanent resident to the United States.

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 shown that she acquired United States citizenship at birth because she has failed to establish that her mother was physically present in the United States for the required period prior to the applicant's birth. Accordingly, the appeal will be dismissed.

This decision is without prejudice to the applicant's mother filing a Petition for Alien Relative (Form I-130) in behalf of the applicant seeking the applicant's lawful admission for permanent residence and, after meeting the necessary requirements, filing an Application for Naturalization.

**ORDER:** The appeal is dismissed.