



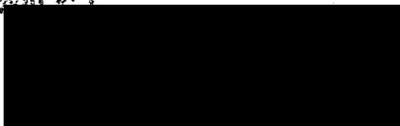
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U.S. Department of Justice

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: San Antonio

Date: MAY 09 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: [Redacted]

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 District Director, San Antonio, 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 10, 1958, in Tamaulipas, Mexico. The applicant's father [REDACTED] was born in Mexico in 1910 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in 1929 in the United States. The applicant's parents never married each other. The applicant seeks a certificate of citizenship both:

through her mother as a child born out of wedlock under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409; or

at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined that the applicant was born in Tamaulipas, Mexico, during the time in which Article 70 of the Civil Code of Tamaulipas was in effect, and she was a legitimate child. The district director then denied the application accordingly.

Under Article 70 of the Civil Code of the State of Tamaulipas, Mexico, in effect from 1940 to 1961, marriage shall be considered, to be the union, the cohabitation, and the continuous sexual relations of one man and one woman. Therefore, a common-law relationship in the State of Tamaulipas constitutes a marriage for all legal purposes, including the legitimacy of the issue of such unions, notwithstanding the general provisions of Article 130 of the constitution of Mexico requiring civil formalities. See Matter of Hernandez, 14 I&N Dec. 608 (BIA 1973, A.G. 1974).

The applicant was one of 12 children (17 children according to documentation dated May 29, 1985) born in Mexico to the same parents, 10 of whom were born in Tamaulipas and 9 of whom were born between November 1940 and February 1962.

On the appeal filed on December 14, 2000, counsel states that the applicant would like more time to review the Civil Code of Tamaulipas and will require one year. Counsel refers to a notation made on the alien's birth certificate in Matter of Hernandez, supra, that the alien was the daughter of a registered marriage.

This notation has no bearing on the Attorney General's decision regarding common-law marriages in the State of Tamaulipas between 1940 and 1961. The Associate Commissioner is bound by that decision, and it is concluded that the present applicant was not "born out of wedlock" pursuant to the finding in Matter of Hernandez, and she did not acquire U.S. citizenship under section 309 of the Act.

More than one year has elapsed since the appeal was filed, and no additional evidence has been entered into the record. Therefore a decision will be entered based on the present record.

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, provided, 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's mother testified that she lived the first year of her life in the United States and her parents took her to Mexico following her first birthday. She stated that her parents allowed her to visit her grandmother in the United States for half of the year, so she spent half of the year in the United States with her grandmother and the other half of the year in Mexico with her parents until the age of 14.

It is also noted that the applicant entered the United States unlawfully in September 1999. The record is devoid of proof to show that she has ever attempted to procure evidence of U.S. citizenship at a U.S. Consulate abroad or at a Service office prior to the present application which was submitted when the applicant was 41 year old.

Absent evidence to the contrary, the applicant has not shown that she acquired United States citizenship at birth as a legitimate child following the above discussion, 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.

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 that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.