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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: San Antonio

Date:

**NOV 25 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

**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, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record contains a birth certificate which reflects that the applicant was born in Mexico on October 18, 1954. On his N-600 application the applicant alleges that he was born on October 15, 1954. The applicant also alleges on the application that his grandmother was born in the United States. He claims U.S. citizenship under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409(c), as a person born out of wedlock to a U.S. citizen mother.

The record reflects that the applicant's mother, [REDACTED] hereafter referred to as [REDACTED] was born in Mexico on April 20, 1934. [REDACTED] was admitted to the United States as a permanent resident on February 15, 1961, and subsequently naturalized on September 10, 1971, under the name [REDACTED] when the applicant was 16 years and 11 months old. [REDACTED] died on May 30, 1992.

The applicant alleges that [REDACTED] acquired U.S. citizenship at birth through her U.S. citizen mother [REDACTED] hereafter referred to as [REDACTED] the applicant's maternal grandmother, who was allegedly born in Texas. The record contains a delayed birth certificate which reflects that [REDACTED] was born in Texas on February 24, 1907, to [REDACTED] and [REDACTED]. That document was issued based on a baptismal certificate issued by [REDACTED] in Floresville, Texas, showing that [REDACTED] was baptized on December 24, 1907; Social Security records; and an affidavit. The baptismal certificate fails to indicate [REDACTED] actual place of birth. [REDACTED] delayed birth certificate was issued on March 14, 1962, 52 years after [REDACTED] birth and after [REDACTED] had been issued an immigrant visa and had immigrated to the United States.

The district director denied the application after he determined that the record failed to establish that the applicant's mother had the required continuous physical presence in the United States prior to the applicant's birth.

On appeal, the applicant asserts that there was Service bias in making the decision, that the Service did not consider all the evidence he submitted, and that the Service relied only on evidence that was unfavorable to him. The applicant claims that his mother acquired U.S. citizenship under section 301(h) of the Act, 8 U.S.C. § 1401.

On October 25, 1994, section 101(a) of the Technical Corrections Act of 1994, Pub.L. 103-416, 108 Stat. 4305, added section 301(h) and clearly made it retroactive.

Section 301 of the Act provides that: The following shall be a nationals and citizens of the United States at birth:

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

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 reflects that the applicant's grandmother, [REDACTED] was born in the United States in February 1907 and was baptized in December 1907 in Floresville, Texas which is approximately 25 miles southeast of San Antonio. Therefore, [REDACTED] had resided in the United States.

The applicant's mother [REDACTED] was born in Mexico on April 20, 1934, to [REDACTED]. According to section 301(h) of the Act, [REDACTED] acquired U.S. citizenship at birth through her mother, [REDACTED] who was born in and had resided in the United States. [REDACTED] acquisition of U.S. citizenship at birth did not occur retroactively until the Technical Corrections Act of 1994. Therefore, she was properly issued an immigrant visa and naturalized as a U.S. citizen in 1971.

The record contains the following documentation to establish the applicant's birth in Mexico:

A birth certificate showing his birth in Nuevo Laredo, Tamaulipas, Mexico on October 18, 1954.

[REDACTED] naturalization documentation, dated June 1971, containing his name and indicating that he was born in Mexico on October 15, 1954.

[REDACTED] immigrant visa application, dated February 1961, indicating that he was born in Mexico.

Although the applicant claims that he was born in the United States and his birth was later registered in Mexico, this assertion is unsupported by primary evidence in the record. Absent evidence to the contrary, his Mexican birth certificate and entries by his mother under oath on her immigrant visa and naturalization

applications constitute prima facie evidence of his birth in Mexico in this matter.

Section 309(c) of the Act states, in pertinent part, that:

Notwithstanding the provision of subsection (a) of this section, a person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record contains the following documentation to establish continuous physical presence in the United States:

lawful admission to the United States on February 15, 1961.

indication, under oath, on her immigrant visa application that she resided in Mexico from 1942 to 1961, since her 16th birthday.

indication, under oath, on her Petition for Naturalization on June 1, 1971, that she did not enter the United States until February 15, 1961.

indication in a sworn statement on February 2, 1979, that she moved from as a baby, and remained at the home of her in-laws until 1952. In that same sworn statement, stated that she lived in Nuevo Laredo from 1939 until she married in 1951.

An August 3, 1972 statement, under oath, by ex-husband, that he married in Mexico and she stayed with his parents in He also stated that he divorced in about 1952.

The record also contains affidavits, prepared in 2001, and brothers, her daughter and her cousin, all indicating that lived in the United States from 1949 to 1952. These affidavits, prepared 40 years after initial statements under oath, do not overcome earlier sworn entries by and a supporting statement by ex-husband in 1972. The applicant has not demonstrated that his U.S. citizen mother met the continuous physical presence requirements prior to the applicant's birth in October 1954, as required under section 309(c) of the Act.

In accordance with 8 C.F.R. § 341.2(c), the burden of proof rests with the applicant to establish the claimed citizenship by a



preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.