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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY



FILE

Office: Houston

Date: **MAY 08 2003**

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)

ON BEHALF OF APPLICANT:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 30, 1954, in Mexico. The applicant's father, [REDACTED] was born in Mexico in May 1931 and became a naturalized U.S. citizen in March 1999 when the applicant was 44 years old. The applicant's mother, Isidora Solis, was born in Mexico in April 1935 and acquired U.S. citizenship at birth through her mother. The applicant's parents married each other on November 21, 1953. 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 district director determined that the record failed to establish that the applicant's mother had been physically present in the United States or one of its outlying possessions for 10 years at the time of the applicant's birth, at least 5 of which were after age 14, as required under section 301(g) of the Act.

On appeal, counsel states that the applicant's father is a naturalized U.S. citizen who acquired his U.S. citizenship through his mother (the applicant's grandmother, [REDACTED] who was born in the United States on December 15, 1888, and baptized in Brownsville, Texas, on May 4, 1889. Counsel attaches a copy of the amendments to section 301 of the Act to support her assertions.

The record reflects that two prior applications filed by the applicant were denied in 1975 and 1976 and prior to the following amendment.

Paragraph (h) was added by subsection (a)(2) of § 101 of the Immigration and Nationality Technical Corrections Act of 1994 (the INTCA) (P.L. 103-416, 108 Stat. 4306, October 25, 1994) and provided that:

The following shall be nationals and citizens of the United States at birth:

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.

Subsection (c) of § 101 of the INTCA states that, except as provided in paragraph (2), the immigration and nationality laws of the United States shall be applied (to persons born before, on, or after the date of enactment of this Act), as though the amendment made by subsection (a), and subsection (b), had been in effect as of the date of their birth, except that the retroactive application of the amendment and that subsection shall not affect the validity

of citizenship of anyone who has obtained citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act o May 24, 1934 (48 Stat. 797).

According to the baptismal certificate, the applicant's grandmother, [REDACTED] was born in the United States. The record fails to contain a birth certificate for Hilaria Cavazos or other evidence relating to her claim to U.S. citizenship. A baptismal certificate is classified as secondary evidence.

The applicant's father, [REDACTED] naturalized in March 1999 and after the 1994 effective date of the INTCA amendment creating section 301(h) of the Act. Pursuant to 8 C.F.R. 316.2, an applicant for naturalization must be an alien, among other requirements. Although the 1994 amendment was in effect, the applicant's father pursued U.S. citizenship as an alien and applied for naturalization rather than a certificate of citizenship under section 301(h) of the Act. The father's claim to acquisition of U.S. citizenship at birth can only be pursued under the provisions of 8 C.F.R. 301.1, by a new Form N-600 application supported by the appropriate documentation and by submitting it to a Bureau officer for examination.

The applicant filed the present application seeking a certificate of U.S. citizenship under section 301(g) of the Act and not under section 301(h) of the Act. Therefore, the Administrative Appeal Office will review the appeal under this provision of the Act.

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 at the time of the applicant's birth, his father was an alien and his mother was a U.S. citizen. The record reflects that the applicant's mother started residing in the United States in 1975, after the applicant's birth.

Pursuant to 8 C.F.R. § 341.2(c), 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.