



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: PORT HURON (DETROIT), MI Date: SEP 09 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940, 8 U.S.C. § 601.

ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

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DISCUSSION: The application was denied by the Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 23, 1946, in Mexico. The applicant's mother, [REDACTED] (Mrs. [REDACTED]) was born in Monroe County, Michigan on February 22, 1930, and she was a United States (U.S.) citizen. The applicant's father, [REDACTED] was born in Mexico and was not a U.S. citizen. The applicant's parents married in Mexico on August 16, 1945. The applicant seeks a certificate of citizenship based on the claim that he derived U.S. citizenship at birth through his mother.

The district director determined that the applicant had failed to establish his U.S. citizen mother resided in the United States or its outlying possessions for a period of ten years prior to the applicant's birth, at least five of which were after the age of sixteen, as required by section 201(g) of the Nationality Act of 1940 (the NA), 8 U.S.C. § 601(g). The application was denied accordingly.

On appeal, counsel acknowledges that the applicant's mother was sixteen years old when the applicant was born and that she therefore does not meet the requirement that she reside in the U.S. for five years, after the age of sixteen and prior to the applicant's birth. Counsel asserts, however, that Mrs. [REDACTED] meets the physical presence and age requirements set forth section 301(g) of the Immigration and Nationality Act, as amended on November 14, 1986 (the Act). Counsel asserts further that failure to apply section 301(g) of the Act retroactively in the present case violates the applicant's Fourteenth Amendment constitutional right to equal protection, because prior citizenship laws discriminated against the applicant's mother on the basis of her age.

The AAO finds that it has no jurisdiction to rule upon the constitutionality of the Act. *See Matter of C-*, 20 I&N Dec. 29 (BIA 1992). The AAO will therefore not address counsel's assertion that provisions of section 201(g) of the NA violate the applicant's equal protection rights under the U.S. Constitution.

The AAO finds further that it is well established that "[t]he applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). Counsel's assertion that the applicant's citizenship claim should be adjudicated pursuant to citizenship provisions contained in section 301(g) of the Act, as amended on November 14, 1986, therefore fails.

Because the applicant was born on December 23, 1946, section 201(g) of the NA applies to his case. In order for a child born outside of the United States to derive citizenship from one U.S. citizen parent pursuant to section 201(g) of the NA, it must be established that, when the child was born, the U.S. citizen parent resided in the U.S. or its outlying possession for ten years, at least five of which were after the age of sixteen. The applicant must therefore establish that his mother resided in the U.S for ten years between February 22, 1930 and December 23, 1946, and that five of those years occurred after February 22, 1946, when Mrs. Sequeda turned sixteen.

In the present case, only ten months passed between Mrs. [REDACTED] sixteenth birthday (on February 22, 1946) and the applicant's birth (on December 23, 1946). Mrs. [REDACTED] therefore failed to meet section 201(g) of the NA requirements that she reside in the U.S. for five years after the age of sixteen and 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 in the present case has failed to meet his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.