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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: HOUSTON, TEXAS

Date:

SEP 09 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

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

U.S. DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND NATURALIZATION SERVICE
IMMIGRATION AND NATURALIZATION SERVICE
IMMIGRATION OF PERSONAL IDENTITY

PUBLIC COPY

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

The record reflects that the applicant was born in Mexico on December 3, 1953, and that he obtained derivative U.S. citizenship through his U.S. citizen mother, [REDACTED]. On February 5, 1979, the applicant formally renounced his U.S. citizenship before a U.S. Consular Officer in Monterrey, Mexico. The applicant presently seeks a new certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401.

The director determined that because the applicant renounced his U.S. citizenship under section 349 of the Act, 8 U.S.C. § 1481, he was ineligible to apply for citizenship under section 301 of the Act. The application was denied accordingly.

Counsel asserts on appeal that the applicant was not "intelligently informed that he would not be able to [re]attain his U.S. citizenship" when he renounced his U.S. citizenship. Counsel asserts that the applicant should therefore be allowed to reacquire derivative U.S. citizenship through his mother.

Section 349 of the Act states in pertinent part that:

(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality-

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years;

...

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;

Section 358 of the Act, 8 U.S.C. §1501 states:

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. Approval by the Secretary of State of a certificate

under this section shall constitute a final administrative determination of loss of United States nationality under this Act, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 360.

The present record contains a Certificate of Loss of Nationality of the United States, approved by the Department of State, American Consul General in Monterrey, Mexico on May 11, 1981, reflecting that the applicant renounced his U.S. citizenship before a U.S. Consular Officer in 1979. The record additionally contains a May 22, 2002, letter from the Vice Consul at the Consulate General of the United States of America, in Monterrey, Mexico, stating that the applicant expatriated himself on July 12, 1974, by formally declaring allegiance to Mexico with the intention of relinquishing his U.S. citizenship, and concluding that the Department of State found no adequate grounds to overturn the applicant's Certificate of Loss of Nationality.

The AAO finds it is bound by the Department of State's determination regarding the applicant's loss of U.S. citizenship pursuant to section 358 of the Act.¹ Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that, if applicable, the applicant must appeal his loss of nationality determination pursuant to the Department of State appeal process.