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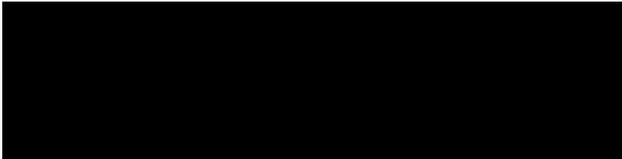
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U.S. Citizenship
and Immigration
Services

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APR 11 2005



FILE:



Office: MIAMI, FL

Date:

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, 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 Colombia on August 6, 1941. The applicant's father, [REDACTED] was born in Colombia on January 12, 1919. He obtained derivative U.S. citizenship through a U.S. citizen parent. The applicant's mother, [REDACTED] was born in Colombia on July 21, 1923. She was not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 201(g) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(g), based on the claim that she acquired U.S. citizenship at birth through her father.

The acting district director determined that the applicant had failed to establish she was legitimated by her father prior to her twenty-first birthday. The acting district director additionally determined that the applicant had failed to establish her U.S. citizen father had resided in the U.S. for ten years prior to her birth, at least five years of which were after he turned sixteen, as required by section 201(g) of the Nationality Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant's father, [REDACTED] acknowledged his paternity over the applicant on her birth certificate at the time of her birth, and that such acknowledgement constitutes legitimation under Colombian law. Counsel does not address whether [REDACTED] meets the residence requirements for transmitting citizenship under the Nationality or Immigration and Nationality Acts.

"The 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). The applicant was born on August 6, 1941. Section 201(g) of the Nationality Act is therefore applicable to her derivative citizenship claim.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

Section 309(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(b), discusses legitimation requirements for children born out of wedlock and provides that:

Except as otherwise provided in section 405, the provisions of section 301(g) [previously known as section 301(a)(7) of the former Immigration and Nationality Act (the former Act)], shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

In support of his assertion that the applicant was legitimated under Colombian law, counsel submits a July 31, 2003, Library of Congress report written by [REDACTED] entitled, "Recognition of Children

in Colombia". The report states in pertinent part that, pursuant to applicable provisions of the Colombian Civil Code:

[A] child born out of wedlock may [sic] be recognized through the subsequent marriage of the natural parents of the child, through a declaration in the child's birth registration, through a public notarized deed of acknowledgment, or in a will.

Children recognized by any of the above mentioned means have the same rights as children who are born to married parents or are adopted. This is the rule, even when the individual in question was born in 1940, before the enactment of Law 75 of 1968. (Citations omitted).

The applicant's Colombian birth certificate, contained in the record, reflects that she was born to [REDACTED] [REDACTED]. Based on the Colombian Civil Code provisions discussed above, the applicant has established that she was legitimated by her father through a declaration in her birth registration.

Section 201(g) of the Nationality Act provides in pertinent part that citizenship may be derived by:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

Volume 7 of the Foreign Affairs Manual (7 FAM) section 1134.3-2(d) states that section 201 of the Nationality Act does not require a U.S. citizen parent to remain continuously and uninterruptedly in the U.S. for the prescribed period, but that it requires the parent to maintain his place of abode in the United States during any absences. 7 FAM 1134.3-2(d) provides further that absence from the United States as a member of the U.S. Armed Forces was counted as residence in the U.S. provided the service was honorably performed.

The AAO finds that the evidence in the record fails to establish that [REDACTED] resided in the United States at any time prior to the applicant's birth. The AAO notes that, although the record contains evidence that the applicant's father served in the United States Army for almost 37 years between 1945 and 1980 [REDACTED] [REDACTED] entire U.S. military service occurred after the applicant's birth, and abroad, in the Panama Canal.¹ The applicant has therefore failed to establish that her father resided in the United States for the requisite time period set forth in section 201(g) of the Act.

¹ The AAO notes that neither the Nationality Act nor the Act considers the Panama Canal to be an outlying U.S. possession.

As previously noted, section 301(b) of the Act also allows the applicant's eligibility for U.S. citizenship to be assessed under the provisions contained in section 301(a)(7) of the former Act. The Congressional Act of March 16 1956, Pub. L. 84-430, 70 Stat. 50, also provides that a child born abroad during the period of effectiveness of the 1940 Act is allowed to acquire U.S. citizenship retroactive to his or her birth if the U.S. citizen parent had served in the U.S. armed forces after December 31, 1946 and before December 24, 1952, if the parent was physically present in the United States prior to the birth of the child for periods totaling ten years, five of which were after attaining the age of fourteen.

The AAO finds that the applicant has failed to establish that her father was physically present in the United States prior to her birth as set forth in section 301(a)(7) of the former Act. Section 301(a)(7) of the former Act provides in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirement of this paragraph.

As noted above, [REDACTED] U.S. military service record between 1945 and 1980, occurred after the applicant's birth, and abroad, in the Panama Canal, and the AAO finds that that the record contains no evidence to establish [REDACTED] as physically present in the United States at any time 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 U.S. citizenship by a preponderance of the evidence. The applicant has not met her burden in the present matter and the appeal will be dismissed.

ORDER: The appeal is dismissed.