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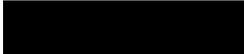


U.S. Citizenship
and Immigration
Services

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FILE:



Office: TUCSON (PHOENIX) AZ

Date: APR 21 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on February 11, 1952, in Mexico. The applicant's mother, [REDACTED] was born in Nacaozari, Mexico on January 13, 1914, and she claimed U.S. citizenship at birth through her U.S. citizen father. The applicant's father, [REDACTED] was born in Mexico and he was not a U.S. citizen. The applicant's parents married in Mexico in 1937. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), (now known as section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)).

The district director determined that the applicant had failed to establish that his mother met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

Counsel asserts on appeal that deportation proceedings against the applicant were terminated in 1996, based on an immigration judge (IJ) finding that the applicant was a U.S. citizen. Counsel asserts that the IJ finding was not appealed and that pursuant to principles of "res judicata" and "collateral estoppel", U.S. Citizenship and Immigration Services (CIS) is bound by the IJ's final determination regarding the applicant's U.S. citizenship. Counsel additionally asserts that, in the event that the applicant is required to litigate his citizenship claim, he should be entitled to recover his costs and fees pursuant to the Equal Access to Justice Act.

The AAO notes that its jurisdiction is limited to that authority specifically granted to the AAO through the regulations. *See* 8 C.F.R. § 2.1 (2004). *See also* 8 C.F.R. § 103.1(f)(3)(iii) (2003). Accordingly, the AAO finds that it has no jurisdiction to determine whether the applicant is entitled to recovery of his costs under the Equal Access to Justice Act. The AAO additionally finds that it has no jurisdiction to determine whether principals of collateral estoppel apply to the applicant's case. *See generally, Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991) (holding that estoppel is an equitable form of relief that is available only through the courts).

The AAO finds further that counsel has failed to establish the IJ's 1996 deportation hearing findings or the termination of deportation proceedings against the applicant, constituted a final and binding determination that the applicant is a U.S. citizen.

The AAO notes that an IJ does not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the IJ's termination of deportation proceedings against the applicant was based on the IJ's determination that the Immigration and Naturalization Service had failed to meet its burden of proving the applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence.) *Minasyan v. Gonzalez*, 2005 WL 647736 (9th Cir. 2005) also clarifies that an immigration court does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with the U.S. Citizenship and Immigration Services (CIS) citizenship unit and the federal courts. Moreover, 8 C.F.R. § 341.3(c), specifies that CIS has jurisdiction over certificate of citizenship proceedings, with the burden of proof being on the alien to establish his or her claim to U.S. citizenship by a preponderance of the evidence. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), clarifies that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true.

“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.” *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born in Mexico in 1952. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

In the present matter, the applicant must establish that his mother [REDACTED] was a U.S. citizen at the time of the applicant’s birth and that she was physically present in the U.S. for a period of ten years between January 13, 1914 and February 11, 1952, five years of which occurred after January 13, 1928.

Because the applicant’s mother was born in 1914, her U.S. citizenship status is determined by the provisions contained in the Act of February 10, 1855, incorporated as section 1993, Revised Statutes of the United States (Revised Statutes). Essentially, the Revised Statutes provided that a child born abroad to a U.S citizen father derived U.S. citizenship at birth if the father had resided in the U.S. at one point in his life. The record contains the following evidence relating to [REDACTED] U.S. citizenship:

[REDACTED] birth certificate reflecting that her father was born in Santa Rosa, California.

A copy of a card signed on July 31, 1957, in Douglas, Arizona by [REDACTED] SII, stating, “[p]assed as U.S. citizen through mother. Has not complied with residence requirements. Must comply with section 301(b) of I&NA”

Sworn testimony given by [REDACTED] in a 1996 sworn video statement and during the applicant’s July 19, 1996 deportation hearing, stating that her father was born in Santa Rosa, California around 1867, and that after her father’s death, her mother obtained U.S. citizenship cards for the applicant and their family. [REDACTED] additionally stated that she applied for a replacement certificate of citizenship after losing her citizenship card.

The record contains the following evidence relating to [REDACTED] physical presence in the U.S. and in Mexico during the requisite time period:

A Mexican marriage certificate reflecting that [REDACTED] married in Mexico in 1937 at age seventeen.

A Mexican birth certificate reflecting that the applicant’s sister, [REDACTED] was born in Mexico on November 8, 1938.¹

¹ The AAO notes that this birth certificate states that [REDACTED] nationality is Mexican.

A U.S. birth certificate reflecting that [REDACTED] gave birth to the applicant's brother, [REDACTED] in California on November 6, 1944. The birth certificate indicates that [REDACTED] residence at the time of the child's birth was in Los Angeles, California and that the father, [REDACTED] had resided in California for 2 months at the time of the child's birth. The birth certificate additionally indicates that for mailing and registration purposes, [REDACTED] address was in Mexico.

An August 19, 1996, sworn video transcript by [REDACTED] providing information relating to her U.S. citizenship.

The applicant's July 19, 1996 deportation hearing transcript containing the sworn testimony by [REDACTED] stated in part that she attended elementary school in Los Angeles, California for between 3 to 8 years (*see* p.10). [REDACTED] also stated that she lived and worked temporarily in California and Arizona prior to the applicant's birth, and that three of her children, Alicia, born March 21, 1936, Jose Armando, born November 6, 1944, and Hector (no birth date provided) were born in the United States (*see* p. 11-13).

The AAO finds that the applicant has failed to establish by a preponderance of evidence that his mother was a U.S. citizen. The AAO notes that the record does not contain [REDACTED] father's birth certificate, and the record contains no other evidence to corroborate the claim that [REDACTED] father resided in the United States. In addition, the card signed by [REDACTED], SII on July 31, 1957 contains a photograph, but no name or identifying information to establish to whom the card was issued. The record also does not contain the replacement certificate of citizenship information referred to by [REDACTED] and the record contains no certificate of citizenship or citizenship card for [REDACTED].

The AAO finds that the applicant has also failed to establish by a preponderance of the evidence that his mother met U.S. physical presence requirements as set forth in section 301(a)(7) of the former Act. The AAO notes that the record contains only one U.S. birth certificate for [REDACTED], [REDACTED]. The record contains no other U.S. birth certificate information for [REDACTED] children. The record also contains no school or hospital record evidence for [REDACTED] and the record contains no other corroborating evidence to establish that [REDACTED] worked or resided in the U.S., or was in any other way physically present in the U.S. for ten years between January 13, 1914 and February 11, 1952, at least five years of which occurred after [REDACTED] turned fourteen on January 13, 1928.

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 has failed to meet his burden of proof in the present matter, and the appeal will be dismissed.

ORDER: The appeal is dismissed.