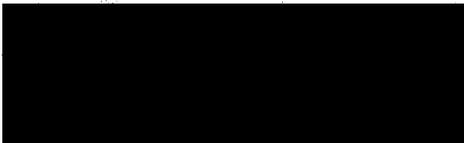


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U.S. Citizenship  
and Immigration  
Services

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*ER*

FILE:



Office: EL PASO, TEXAS

Date: **AUG 10 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.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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

**DISCUSSION:** The application was denied by the District Director, El Paso, 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 March 21, 1953. The applicant's mother, [REDACTED] was born in Wichita, Kansas on March 10, 1932, and she was a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico. He was not a U.S. citizen. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director determined that the applicant had failed to establish his mother was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after Ms. Cazares reached the age of fourteen. The application was denied accordingly.

On appeal, the applicant asserts that several of his siblings derived citizenship through his mother and that he is equally entitled to derivative U.S. citizenship through his mother.

The AAO notes that the applicant stated on his Form N-600, Application for Certificate of Citizenship (N-600 application) that his parents never married. The evidence contained in the record, however, reflects that the applicant's parents were married and that the applicant was born in wedlock. Specifically, the applicant's birth certificate states that his mother was married, and the applicant's last name includes the last name of his father. In addition [REDACTED] death certificate states that she was widowed. Moreover, the AAO notes that the applicant did not address or dispute the district director's finding that his parents were married. Because the evidence in the record reflects that [REDACTED] was married to the applicant's father at the time of the applicant's birth, the AAO will assess the applicant's claim pursuant to derivative citizenship provisions for a legitimate child born in wedlock.<sup>1</sup>

"The applicable law for transmitting citizenship to a [legitimate] 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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on March 21, 1953. Section 301(a)(7) of the former Act is therefore applicable to his derivative citizenship claim.

Section 301(a)(7) of the former Act states in pertinent part that:

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<sup>1</sup> The AAO notes that a citizenship claim made by a child born out of wedlock to a U.S. citizen mother would be assessed pursuant to section 309(c) of the Act, 8 U.S.C. § 1409, which states in pertinent part that:

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

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 was physically present in the U.S. for ten years between March 10, 1932 and March 21, 1953, and that five of those years occurred after March 10, 1946, when Ms. [REDACTED] turned fourteen.

The evidence pertaining to Ms. [REDACTED] physical presence in the United States during the requisite time period consists of the following:

A Kansas Birth Certificate reflecting that Ms. [REDACTED] was born in Wichita, Kansas on March 10, 1932.

A Certificate of Baptism reflecting that Ms. [REDACTED] was baptized in Wichita, Kansas on May 8, 1932.

A page from a 1932 Wichita, Kansas, City Directory reflecting that Ms. [REDACTED] mother, Anna, resided in Wichita, Kansas in 1932.

Seven Certificates of Citizenship that the applicant claims belong to siblings that derived U.S. citizenship through his mother.

The record contains no other evidence relating to Ms. [REDACTED] physical presence in the United States, and the record does not contain any of the evidence or information submitted by the applicant's siblings regarding their mother's physical presence in the United States. Based on the evidence contained in the record, the AAO finds that the applicant established only that Ms. [REDACTED] was physically present in the United States in 1932.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant failed to establish by a preponderance of the evidence that his mother was physically present in the U.S. for ten years, at least five of which were after the age of fourteen. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.