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U.S. Citizenship
and Immigration
Services

E2

FILE:

Office: PHOENIX, ARIZONA

Date: **AUG 18 2005**

IN RE:

Applicant:

APPLICATION:

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

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona, 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 May 30, 1975 in Mexico. The applicant's father was born on August 26, 1950 in Salinas, California, and he is a U.S. citizen. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents were married in Mexico on November 29, 1974. The applicant seeks a certificate of citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her father.

At the applicant's interview, it was determined that the applicant had failed to establish that her father had resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after Ms. [REDACTED] turned fourteen, as required by § 301(a)(7) of the former Act. The applicant was afforded twelve weeks (until late April, 2004) in which to submit evidence of her father's physical presence in the United States. The district director found that the applicant failed to respond to the request for evidence; hence, he denied the application as abandoned, based on 8 CFR § 103.2(b)(13).

On appeal, the applicant states that she replied to the district director's request for evidence, and she attaches copies of documentation she indicates had already been submitted. The record contains the following documentation regarding the applicant's father's U.S. physical presence:

- A statement by the applicant's father dated March 28, 2004
- The applicant's father's California birth certificate
- The applicant's father's baptismal certificate from a California church
- A social security earnings statement for the applicant's father
- A vehicle purchase document dated June 15, 1972

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. See *Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

"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 in this case was born in Mexico in 1975. Section 301(a)(7) of the former Act thus controls her claim to derivative citizenship.

Section 301(a)(7) of the former Act states 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 requirements of this paragraph.

The record establishes that the applicant's father was a U.S. citizen at the time of the applicant's birth. The issue to be resolved is whether the applicant's father was physically present in the United States for ten years between August 26, 1950 and May 30, 1975, at least five years of which were after August 26, 1964. The AAO has reviewed the entire record and finds that the required physical presence is not established by the evidence submitted.

At the time of her interview, the applicant indicated that her father was physically present in the United States about six months every year from 1975 to 1987, and from 1987 until the date of the interview. These periods do not count toward the physical presence requirement described in § 301(a)(7) of the Act, as they occurred after the applicant was born. As evidenced by his birth and baptismal certificates, the applicant's father was present in the United States during the autumn of 1950. From the applicant's father's statement, it appears that he remained in the United States until 1952. The applicant's father's statement does not specify his own physical presence, instead usually referring to his parents or "the children," but it appears that the applicant's father returned to the United States in 1954 and remained until "the Korean War started." Apparently, the applicant returned to the United States from Mexico with his mother in 1963 and remained in this country until 1968. The applicant's father also states that while he was attending the university in Mexico, he spent his school vacations working in the United States. The statement contains only vague dates and lacks detail and is not supported by any independent affidavits. Based on this statement, it cannot be determined how much physical presence the applicant's father accrued during his youth in the United States.

The applicant's father's social security statement reflects earnings in the United States from 1966 through 1970 and in 1972 and 1973. Although the applicant's father was physically present in the United States during this period prior to the applicant's birth, the record does not specify how many months out of each year he was in this country. Thus, the AAO cannot conclude that the applicant's father accrued a total of ten years of physical presence, five of which must have been after his fourteenth birthday. It should be noted that this decision is without prejudice to the filing of another Form N-600 if and when sufficient documentation becomes available.

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. Based on the concerns noted above, the AAO finds that the applicant failed to establish by a preponderance of the evidence that her father met the physical presence requirement set forth in § 301(a)(7) of the Act. Accordingly, the applicant is not eligible for citizenship under section 301(a)(7) of the former Act, and the appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.