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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON, TEXAS

Date: FEB 09 2005

IN RE:

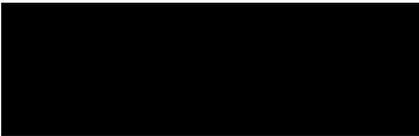
Applicant:



APPLICATION:

Application for Certificate of Citizenship 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 applicant was born on March 12, 1958, in Mexico. The applicant's mother, [REDACTED] was born in Texas on March 19, 1937, and she is a United States citizen. The applicant's father, [REDACTED] was born in Mexico, and he is not a U.S. citizen. The applicant's parents married on January 22, 1955, in Mexico. The applicant 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 (the Act); 8 U.S.C. § 1401(g)), based on the claim that she acquired U.S. citizenship at birth through her mother.

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

On appeal, counsel asserts that the affidavits submitted by the applicant establish [REDACTED] was physically present in the United States for the requisite time period set forth in section 301 of the Act.

"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 1958. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)), therefore applies to her citizenship claim.

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.

The applicant must therefore establish that her mother was physically present in the U.S. for ten years between March 19, 1937 and March 12, 1958, and that five of those years occurred after March 19, 1951, when [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED] physical presence in the United States between March 19, 1937 and March 12, 1958:

A Delayed Certificate of Birth reflecting that [REDACTED] was born in Taft, Texas on March 19, 1937.

A notarized affidavit dated January 7, 2004, written by the applicant's mother [REDACTED] stating that she was born in Taft, Texas on March 19, 1937, and that as a child, she used to come to the U.S. with her parents to work in the fields. [REDACTED] states further that when she turned eleven, she lived with, and worked for [REDACTED] [REDACTED] states that she went to Mexico in 1958 to give birth to [REDACTED]

the applicant.

A notarized affidavit dated January 2, 2004, written by [REDACTED] stating that she has known [REDACTED] since birth, that [REDACTED] moved to the affiant's mother's home when she was eleven years old, and that [REDACTED] the affiant between 1952 and 1958.

A notarized affidavit dated August 21, 1999, written by [REDACTED] stating that he knew [REDACTED] during her childhood in Taft, Texas.

8 C.F.R. § 103.2(b)(2) states, in pertinent part:

(2) *Submitting secondary evidence and affidavits* – (i) *General*. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petitions who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available*. Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available.

The AAO notes that the only primary or secondary evidence contained in the record regarding [REDACTED] physical presence in the U.S., is a birth certificate reflecting that she was born in Texas on March 19, 1937.

The AAO notes further that counsel failed to demonstrate that he or the applicant made an effort to locate evidence of [REDACTED] physical presence in the United States prior to the applicant's birth. Counsel also failed to demonstrate that primary evidence or relevant secondary evidence relating to [REDACTED] physical presence in the U.S. is unavailable. Accordingly, the AAO finds that the applicant has failed to overcome the presumption of ineligibility as set forth in 8 C.F.R. § 103.2(b)(2).

Moreover, the AAO finds that the three affidavits submitted by the applicant lack probative value, in that they contain no supporting evidence or information to substantiate their employment and residence claims and because they lack basic and material details regarding the exact dates that the applicant's mother resided in the United States, the addresses at which she and her family resided, or the names of their employers and the locations of employment.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met her burden and the appeal will be dismissed.



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ORDER: The appeal is dismissed.