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U.S. Citizenship
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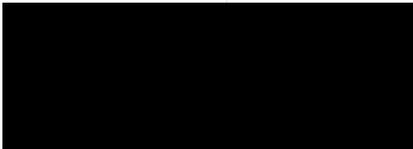
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to § 301(h) of the Immigration and Nationality Act, 8 U.S.C. §1401

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, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Portugal on January 14, 1927 of a U.S. citizen mother and a Portuguese father. The applicant's mother was born on November 10, 1898 in Lowell, Massachusetts, and her parents were married in 1920.

"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 1927; therefore, the applicable law in this case is Section 1993, Revised Statutes of 1878, which was amended in 1994 and is now codified at § 301(h) of the Immigration and Nationality Act (the Act).

The district director found that the applicant failed to establish that her mother was born in the United States. On appeal, counsel asserts that the applicant has established her mother's birth in the United States through the Portuguese-issued civil documents already on the record. The AAO has reviewed the entire record and finds that the applicant has established that she acquired U.S. citizenship at birth through her mother.

Section 301(h) of the Act states:

The following shall be nationals and citizens of the United States at birth:

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

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. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that in order to satisfy the preponderance of evidence standard, it is generally sufficient that the evidence establish that something is probably true. The applicant has submitted sufficient evidence to establish it is probably true that her mother was born in the United States.

In a letter dated March 19, 2004, counsel wrote that the clerk's office at Lowell City Hall had informed him that registration of births was not mandatory in 1898. The Commonwealth of Massachusetts issued a statement to the effect that no record was found of the applicant's mother's birth within commonwealth records. Counsel noted that the applicant's mother was born at home to parents who did not speak English, and he suggested that it is likely that the applicant's mother's birth in the United States was simply never registered. The AAO concurs with this conclusion. Counsel also reported that the applicant's mother's baptismal record could not be found in the archives of the Archdiocese of Boston. Given that the applicant's mother may not have attended school, it is reasonable to conclude that no records of her presence in the United States exist in this country.

The record, however, contains civil documents issued in Portugal and numerous affidavits in support of the applicant's claim that her mother was born in the United States. The record contains the following Portuguese documents that state that the applicant's mother's was born in Lowell, Massachusetts:

- The applicant's mother's birth record, which was registered in 1920;
- The applicant's mother's marriage record, which was registered in 1920;
- The applicant's mother's death certificate, issued in 1980;

- The applicant's birth record, which was registered in 1927; and
- The applicant's marriage record, which was registered in 1950.

The Portuguese documents on the record all date from decades before the filing of this application for a certificate of citizenship, and the record contains no indication that the applicant's mother had any motive for fabricating information regarding her place of birth. The record also contains affidavits by the applicant and six other relatives of her mother's, all attesting to her birth and early residence in the United States. The affidavits are not inconsistent with any other information on the record. The cumulative weight of all the documentation on the record is sufficient to establish by a preponderance of the evidence that the applicant's mother was born in and was present in the United States. Thus, the applicant has established the requirements set forth at §301(h) of the Act.

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 AAO finds that the applicant has met her burden of proof; hence, she derives citizenship through her mother pursuant to § 301(h) of the Act. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.