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

22

FILE:

Office: EL PASO, TX

Date: **MAR 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(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.

A handwritten signature in black ink, appearing to read "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 on May 16, 1954, in Mexico. The applicant claims that his mother [REDACTED] (Ms. [REDACTED]), was born in Texas on May 18, 1922, and that she is a United States citizen. The applicant's father, [REDACTED] was born in Mexico and he is not a U.S. citizen. The record reflects that the applicant's parents were married in Mexico on October 19, 1942. 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), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found that, based on the evidence in the record, the applicant had failed to establish that his mother was born in the United States or that his mother 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 section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant states on appeal that he is submitting additional evidence to establish his mother's U.S. citizenship.

"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 1961. Section 301(a)(7) of the former Act thus controls her 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.

The applicant must therefore establish that Ms. [REDACTED] was a U.S. citizen at the time of the applicant's birth and that Ms. [REDACTED] met U.S. physical presence requirements prior to the applicant's birth.

The record contains the following evidence relating to Ms. [REDACTED] U.S. citizenship and residence during the requisite time period:

An Attested Record of Birth Certificate from Hidalgo County, Texas, reflecting that [REDACTED] was born on May 18, 1922 in McAllen, Texas, to

██████████ and ██████████ The birth certificate was filed in Hidalgo County, Texas on November 21, 1955.

A Certificate of Baptism reflecting that ██████████ was born in Texas on May 18, 1922, to ██████████ and ██████████ and that she was baptized by the Sacred Heart Church in Texas on November 12, 1922.

A declaration signed by Ms. ██████████ on July 29, 1992, stating that she was born in McAllen, Texas on May 18, 1922 and that she lived in Texas as a child and attended her first years of elementary school in Texas. The declaration states that Ms. ██████████ moved with her family to Mexico, but that she often returned to the U.S. and stayed with her uncle in Texas prior to her marriage in 1942. The declaration states further that Ms. ██████████ returned to Texas for visits several times with her older children prior to 1956.

An affidavit signed by ██████████ on March 5, 1993, stating that he saw Ms. ██████████ mother pregnant when he resided in Texas, and that he saw Ms. ██████████ as a baby in Texas.

An affidavit signed by ██████████ March 9, 1993, stating that Ms. ██████████ father was his uncle and that Ms. ██████████ father told him in November 1955 that Ms. ██████████ was born in McAllen, Texas on May 18, 1922.

Ms. ██████████ October 19, 1942, marriage certificate reflecting that Ms. ██████████ was born in Texas.

The record contains the following evidence relating to Ms. ██████████ Mexican citizenship:

A Mexican Civil Registration of Birth, reflecting that on October 7, 1922, Ms. ██████████ father ██████████ registered the June 5, 1922, birth of his and ██████████ daughter ██████████, Mexico. The Registration of Birth was witnessed by ██████████ and ██████████

A San Antonio elementary school record reflecting that Ms. ██████████ was born in Mexico on May 18, 1922, and that she attended school in San Antonio in 1929.

A September 8, 1978, Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS) denial decision of a Petition to classify Status of Alien Relatives for Issuance of Immigrant Visas filed by Ms. ██████████ on behalf of her children. The decision reflects that Ms. ██████████ petition was denied because a Mexican birth certificate established that Ms. ██████████ was born in ██████████, Mexico on June 5, 1922. The decision reflects that Ms. ██████████ was afforded time to present evidence to refute the Service's contentions regarding her citizenship, but that Ms. ██████████ provided no evidence to the refute the Service's conclusions regarding her citizenship.

The AAO finds that the evidence in the record contains material discrepancies relating to Ms. [REDACTED] place of birth. The AAO notes that although the U.S. and Mexican birth certificates contained in the record contain slightly different names and dates of birth for the child [REDACTED] born in Mexico, and [REDACTED] born in the United States), the birth year and biographical information pertaining to the child's parents and maternal and paternal grandparents are identical. Moreover, the AAO notes that the earlier registration of birth, dated October 1, 1922, occurred about four months after the child's birth in Mexico and was witnessed by two witnesses. The U.S. birth certificate, on the other hand, was registered on November 21, 1955, more than thirty-three years after the child's birth. In addition, the AAO notes that in 1978, Ms. [REDACTED] was given an opportunity to provide evidence to the Service to refute the conclusion that she was not a U.S. citizen, but that she failed to do so.

The AAO finds that given the totality of evidence in the present matter, the delayed Texas birth certificate issued to Ms. [REDACTED] on November 21, 1955, fails to establish that Ms. [REDACTED] was a U.S. citizen. The AAO notes that in addition to the above-noted discrepancies, the Texas school record evidence submitted by the applicant reflects that Ms. [REDACTED] was born in Mexico. Moreover, the AAO finds that the affidavits submitted by the applicant lack probative value in that they are vague and lack material detail relating to Ms. [REDACTED] birth in the United States. The AAO additionally finds that in light of the conflicting evidence contained in the record, the baptismal certificate and marriage certificate information submitted by the applicant does not constitute probative secondary evidence regarding Ms. [REDACTED] s place of birth.

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 his mother is a U.S. citizen.

The AAO notes further that even if the applicant had established that his mother was a U.S. citizen, his claim to derivative citizenship would nevertheless have failed due to the lack of evidence establishing that Ms. [REDACTED] was physically present in the United States for ten years between 1922 and May 16, 1954, at least five years of which occurred after 1936.

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.