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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TEXAS

Date: **SEP 21 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, 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 March 22, 1962 in Mexico. The applicant's mother was born in Mexico on December 21, 1937, and she was a U.S. citizen at the time of the applicant's birth. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents were married in Mexico in 1952. 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 mother.

The district director found that, based on the evidence in the record, the applicant failed to establish that her mother resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after her mother turned fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, the applicant submits an additional affidavit to establish her mother's U.S. residence since 1950.

"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 1962; therefore, § 301(a)(7) of the former Act 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 applicant must therefore establish that her mother was a U.S. citizen at the time of the applicant's birth and that her mother met U.S. physical presence requirements prior to the applicant's birth.

The record contains a certificate of citizenship establishing that the applicant's mother acquired U.S. citizenship at the time of her birth. There is no primary evidence establishing the applicant's mother's physical presence in the United States prior to the applicant's birth in 1962, however. The record contains two affidavits attesting to the applicant's mother's physical presence in the United States from 1957 to 1980, and two others witnessing her presence from 1950 to 1965 and 1980, respectively.

The AAO finds that the evidence in the record lacks sufficient detail regarding the applicant's mother's presence in the United States. The affidavits are also not supported by any independent evidence establishing the applicant's mother's whereabouts and activities in the United States during her claimed period of residence. 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 lack of documentation noted above, the AAO finds that the applicant failed to establish by a preponderance of the evidence that her mother was physically present in the United States for ten years between 1937 and 1962, at least five years of which occurred after 1941. Accordingly, the applicant is not eligible for citizenship under § 301(a)(7) of the former Act, and the appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.