



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date:

DEC 15 2006

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1421(c).

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, Chief
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 May 24, 1962 in Mexico. The applicant's mother [REDACTED], was born on July 5, 1937 in Mexico and acquired U.S. citizenship at her birth. The applicant's father, [REDACTED] was at the time of her birth, a citizen of Mexico and, based on the applicant's Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents married on December 1, 1972. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

The director denied the Form N-600 based on his determination that the record did not establish that the applicant's mother had met the residency requirements of section 301(a)(7) of the Act. On appeal, counsel contends that the director should have considered the applicant's claim under section 309(c) of the Act, 8 U.S.C. § 1421(c), because she was born out of wedlock to a U.S. citizen mother. The AAO agrees.

"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 on May 24, 1962 to a U.S. citizen mother who was then unmarried. Therefore, her claim to U.S. citizenship must be judged under section 309(c) of the 1952 Act, as amended, the applicable immigration statute in effect in 1962.

Section 309(c) of the Act states:

[A] person born, after December 23, 1952, outside the United States and out of wedlock, shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record includes the certificate of citizenship issued to the applicant's mother on April 21, 1997, which establishes her U.S. citizenship as of the date of her birth on July 5, 1937. It also provides a copy of the December 1, 1972 marriage certificate for the applicant's parents. Accordingly, the applicant has established that she was born out of wedlock to a U.S. citizen mother. The only remaining issue before the AAO is whether the record demonstrates that prior to the applicant's birth, her mother was physically present in the United States for the continuous period of one year.

The record offers no documentary evidence to establish the physical presence of the applicant's mother in the United States. Instead, the applicant has submitted four affidavits regarding her mother's U.S. residence: two statements made on April 21, 2004 by her mother and father, and two additional statements made by her mother on January 14, 2005 and March 3, 2006. The first affidavit provided by the applicant's mother states that she lived in Texas between the ages of two and eight, and that between ages of eight and fifteen, she lived in Texas during alternate years. In 1954, she asserts, that she and her future husband moved to Harlingen, Texas where they lived until August 1957 before returning to Mexico. She states that she did not move back to the United States until 1972. The statement made by the applicant's father confirms that he and her mother moved to the United States in 1954, remaining until August 1957.

The second affidavit from the applicant's mother revises the time periods she previously indicated she lived in the United States. She states that, although she returned to Mexico at the age of eight, she returned to Texas when she was 11 years old and stayed in McAllen, Texas until she reached the age of 14. She also indicates that, in 1958, she moved back to Harlingen, Texas for six months before returning to Mexico. A list of her residences, by year, accompanies this second affidavit. In her third affidavit, the applicant's mother states that she lived in the United States from the summer of 1952 through August 1957.

Based on the record before it, the AAO does not find the applicant to have established that, prior to her birth, her mother was present in the United States for the continuous period of one year. In the absence of any corroborating evidence, e.g., school, medical, employment or housing records, to support her claims, the statements provided by the applicant's mother are insufficient proof of her presence in the United States. In addition, the affidavits' contain inconsistencies regarding the time periods when the applicant's mother was present in the United States. These inconsistencies are not addressed in the record and undermine the reliability of the submitted statements. Accordingly, the applicant has failed to demonstrate that her mother was physically present in the United States for the continuous period of one year prior to her 1962 birth.

The AAO notes that the record contains copies of the certificates of citizenship granted to two of the applicant's siblings, born in 1966 and 1972 respectively. On appeal, counsel contends that the approval of these cases should result in the issuance of a certificate of citizenship to the applicant. However, each application is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). In the instant case, the record does not establish that the applicant's mother was present in the United States for the continuous period of one year prior to her birth. Accordingly, the application may not be approved. Moreover, if the evidence of record in the cases referenced by counsel is substantially similar to that in the instant case, these previous applications would have been approved in error.

Based on the record before it, the AAO finds insufficient evidence to conclude that the applicant's mother has satisfied the physical presence requirements of section 309(c) of the Act. Accordingly, the appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden in this proceeding.

ORDER: The appeal is dismissed.