

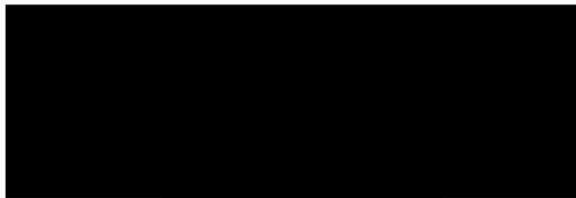
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U.S. Citizenship
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Services

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FILE:

Office: LOS ANGELES, CALIFORNIA

Date: JUL 05 2006

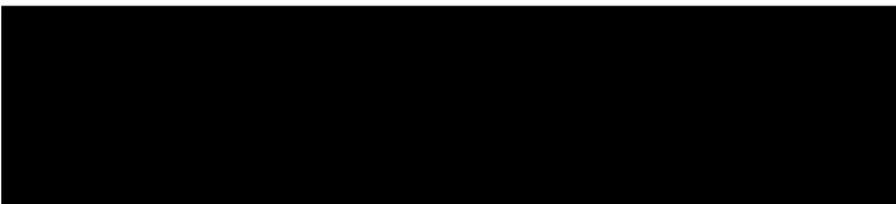
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 Revised Statutes, as amended by the Act of May 24, 1934, Pub.L. 73-250, 48 Stat. 797

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, 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 Mexico on January 23, 1935 of a U.S. citizen father and a non-U.S. citizen mother. The applicant's parents were married to each other at the time the applicant was born. The evidence on the record establishes that the applicant's father was born in Puerto Rico prior to 1899, while that island was still a Spanish colony. There is further evidence on the record of the applicant's father's U.S. citizenship, leading to the conclusion that the applicant's father was present in Puerto Rico when it came under United States jurisdiction.

The district director found that the documentation relating to the applicant's father's birth in Puerto Rico and residence in the United States prior to the applicant's birth was inconsistent, and therefore, not sufficiently probative. The district director noted that the applicant failed to provide documentation to corroborate the applicant's father's birth certificate, which was not registered until 1943. On appeal, counsel asserts that the totality of the documentation on the record supports the applicant's claim to U.S. citizenship. Counsel emphasizes the difficulty in obtaining documentation dating from the time of the applicant's father's birth, and points out that the applicant's sister, who was born before the applicant, obtained her certificate of citizenship based on their father's U.S. citizenship.

The AAO agrees that the documents contain inconsistent dates; however, given the fact that approximately 110 years have passed since the applicant's father's birth, it is unfeasible for the applicant to produce documents and/or affidavits contemporaneous with his father's birth or childhood. Moreover, the AAO finds reasonable counsel's explanation regarding the laxity of official record-keeping in the last days of the Spanish colony and at the turn of the twentieth century in Puerto Rico. Finally, the inconsistent dates are not so different that they should have "thrown up red flags" at the time they were recorded, and all dates indicate that the applicant's father was born in 1896 or 1897, prior to Puerto Rico's independence from Spain. In sum, the AAO finds sufficient the entire body of evidence to establish that the applicant's father was a U.S. citizen who had resided in the U.S. prior to the time of the applicant's birth, as required for the applicant to derive citizenship through Section 1993, Revised Statutes of 1878, as amended by the Act of May 24, 1934 (R.S. 1993).

"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 1935; therefore, the applicable law in this case is R.S. 1993.

The amended Section 1993 states that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

The applicant must therefore establish that his father was a U.S. citizen at the time of the applicant's birth. In making this determination, the AAO must consider two laws: first, Section 7, Act of April 12, 1900, 31 Stat. 77 (erroneously referred to by counsel as the Jones Act), which gave U.S. noncitizen nationality and Puerto

Rican citizenship to all former Spanish subjects who resided in Puerto Rico on April 11, 1899 and continued to reside there as of April 12, 1899; second, the Act of March 2, 1917, Pub.L. 64-368, 39 Stat. 951 (Jones Act), which granted U.S. citizenship to all Puerto Rican citizens, including those who were not residing in Puerto Rico on April 11, 1899 but were residing there as of March 2, 1917.

The following documents establish that the applicant's father was born in Puerto Rico:

- U.S. Citizen Identification Card (issued November 28, 1932) showing father's birth on August 18, 1896.
- Birth certificate (registered on February 1, 1943) showing father's birth on August 8, 1897; and
- Certificate of Identity and Registration for U.S. citizens (issued by American Foreign Service in Mexico on May 8, 1943), showing birth on August 18, 1896.

The record includes the applicant's father's death certificate indicating that he was born in Puerto Rico on September 26, 1897 and that he served in the U.S. military from 1917 to 1919. Counsel has also submitted copies of the applicant's older sister's application for a certificate of citizenship, which was approved on July 3, 1991. The applicant's older sister, who was born in Mexico in 1927, indicated on her application form that their father resided in the United States from 1917 to 1924 and again from 1943 until his death in 1986. Immigration and Naturalization Services, now Citizenship and Immigration Services (CIS), found that the applicant's sister acquired U.S. citizenship at birth through their father, who was a U.S. Citizen by virtue of his birth in Puerto Rico.

On his own Form N-600, the applicant, through counsel, indicated that his father resided in the United States from 1944 until 1988, although his father died in 1986. The form also lists his mother as having resided in the United States from 1944 until 1986, despite the fact that she died in 1980. Counsel entered incorrect dates on the application form that the interviewing officer failed to annotate or correct. In view of these modern, undetected inconsistencies, the AAO finds that it is not unreasonable to expect minor inconsistencies among dates provided for a birth that occurred over a century ago.

A preponderance of the evidence establishes that the applicant's father was born in Puerto Rico prior to April 11, 1899, and that he became a Puerto Rican citizen and U.S. national on April 12, 1900 through the Act of the same date. The applicant's father became a naturalized U.S. citizen on March 2, 1917 through the Jones Act. Had he never been a resident of Puerto Rico after it was annexed by the United States on April 11, 1899, the applicant's father would not have benefited from the Jones Act. It is thus concluded that the evidence also demonstrates that the applicant's father resided in the United States prior to the applicant's birth in 1935. The applicant has therefore been a U.S. citizen since birth pursuant to the terms of R.S. 1993.

In order to retain the U.S. citizenship the applicant derived through his father, the applicant must establish that he entered the United States after his fourteenth but before his twenty-third birthday and remained continuously physically present in the United States for at least five years. The applicant must have completed the five years of continuous physical presence prior to his twenty-eighth birthday. The record contains Social Security and U.S. military documentation establishing that the applicant met these retention requirements. The AAO therefore concludes that the applicant is eligible for a certificate of citizenship.

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 applicant has met that burden; therefore, the appeal will be sustained.

ORDER: The appeal is sustained.