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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

FILE:

OFFICE: CHICAGO, IL

DATE: JUL 05 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on November 16, 1973. The applicant's mother, [REDACTED] was born in Illinois on January 29, 1951, and she is a U.S. citizen. The applicant's father was born in Mexico. The record contains no evidence to establish that he became a naturalized U.S. citizen. The applicant's parents married in Illinois on November 21, 1968. 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) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director determined that the applicant had failed to establish his mother [REDACTED] was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] reached the age of fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal the applicant asserts that he is sending additional proof of his mother's physical presence in the United States prior to his birth, and he indicates that he is entitled to U.S. citizenship under section 301(a)(7) of the former Act.

"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 Mexico in 1973. Section 301(a)(7) of the former Act is therefore applicable to his citizenship claim.

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.

In the present matter, the applicant must establish that his mother was physically present in the U.S. for ten years between January 29, 1951 and November 16, 1973, and that five of those years occurred after January 29, 1965, when [REDACTED] turned fourteen.

The evidence relating to [REDACTED]'s physical presence in the U.S. during the requisite time period consists of the following:

An Illinois State birth certificate reflecting that [REDACTED] was born in Blue Island, Illinois on January 29, 1951.

A Blue Island, Illinois, Public School, Junior High School diploma dated June 13, 1966, stating that [REDACTED] completed junior high department requirements and is entitled to an eighth grade diploma, and that she is entitled to admission to any Illinois high school.

A Cook County, Illinois, Community High School transcript reflecting that [REDACTED] did not graduate and that she attended the high school for 40 ½ days between August 1966 and 1967, and for 48 days from 1967 to October 1968.

A Cook County, Illinois marriage certificate reflecting that [REDACTED] married on November 21, 1968.

A Social Security Administration summary earnings statement reflecting that [REDACTED] earned the following amounts in the United States:

1968 - \$637.00
1969 - \$0.00
1970 - \$1243.00
1971 - \$0.00
1972 - \$0.00
1973 - \$391.00

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The AAO finds that the school evidence presented by the applicant fails to establish that [REDACTED] attended junior high school in the U.S., or that she attended more than four months of high school in the United States. The school evidence additionally fails to establish that [REDACTED] lived in the U.S. between 1966 and 1968. The AAO finds further that the marriage certificate and work history evidence contained in the record fails to establish that [REDACTED] lived in the U.S. between 1968 and 1973.

Upon thorough review of the record, the AAO finds that the totality of the evidence submitted fails to establish by a preponderance of the evidence that [REDACTED] was physically present in the United States for at least ten years prior to the applicant's birth, at least five years of which occurred after January 29, 1965, when [REDACTED] turned fourteen. The applicant has therefore failed to meet his burden of proof in the present matter, and the appeal will be dismissed.

ORDER: The appeal is dismissed.