

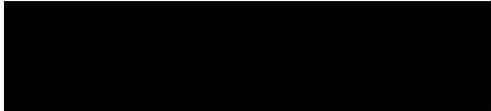
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: ATLANTA, GA DATE: JUL 12 2006

IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Certificate of Citizenship 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia. 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 October 18, 1973. The applicant's father, [REDACTED] was born in Mexico on January 2, 1949. He acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother was born in Mexico and she is not a U.S. citizen. The applicant's parents married in Texas on May 22, 1972. The applicant presently seeks a Certificate of Citizenship based on the claim that she acquired U.S. citizenship at birth through her father 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)).

The district director determined the applicant had failed to establish by a preponderance of the evidence that her father was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after her father reached the age of fourteen, as required by section 301(a)(7) of the former Act. The district director determined further that the applicant did not qualify for citizenship under section 320 of the Act, 8 U.S.C. § 1431 because she was over the age of eighteen when the provision went into effect on February 27, 2001. The district director additionally determined that the applicant did not qualify for citizenship under section 321 of the former Act, 8 U.S.C. § 1432, because her father [REDACTED] was a U.S. citizen at birth rather than a naturalized U.S. citizen as required by section 321 of the former Act, and because the remaining requirements contained in the provision were not satisfied. The application was denied accordingly.

On appeal, counsel does not dispute the district director's finding that the applicant is not eligible for citizenship pursuant to section 320 of the Act and section 321 of the former Act. Counsel asserts, however, that affidavit evidence establishes [REDACTED] primary residence was in the United States prior to the applicant's birth, and that he "resided" in the U.S. for immigration purposes, and thus satisfied the physical presence requirements set forth in section 301(a)(7) of the former Act.

"[T]he 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 therefore applies to her 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. (Emphasis added.)

In order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant must establish that her father was physically present in the U.S. for ten years between January 2, 1949 and October 18, 1973, and that five years occurred after January 2, 1963, when [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED] physical presence in the United States during the relevant time period:

A Certificate of Citizenship reflecting that [REDACTED] was born in Mexico and that he was issued a Certificate of Citizenship on April 30, 1971.

[REDACTED]'s Form N-600, Application for Certificate of Citizenship, filed in March 1971, and adjudicated by the Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) on April 20, 1971, stating that [REDACTED] arrived in the United States on February 27, 1971 and that prior to February 27, 1971, always resided in Mexico.

An affidavit signed by [REDACTED] on November 8, 2005 stating in pertinent part that he lived and worked in the United States during the following time periods: February and December 1961, February and June 1965, August 1965 and January 1968, February 1968 and December 1969, and since January 1970.

An affidavit signed on September 21, 2005, by [REDACTED] cousin, [REDACTED] stating in pertinent part that she has personal knowledge that [REDACTED] lived with her in the United States during the following time periods: February and December 1961, February and June 1965, August 1965 and January 1968, February 1968 and December 1969, and since January 1970.

An affidavit signed by the applicant's mother on November 8, 2005, stating in pertinent part that she met [REDACTED] in Mexico in the summer of 1964, that he frequently traveled to the United States with his family, that [REDACTED] traveled to Texas around February 1965 until January 1968, and between February 1968 and December 1969, and January 1970 until the present.

The AAO finds that the evidence submitted by the applicant fails to establish [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth. The AAO notes that the statements made in the affidavits submitted on appeal contradict the information provided by [REDACTED] in his citizenship application, in which he states that he did not live in the United States prior to February 27, 1971. The AAO finds further that the affidavits submitted by the applicant are vague and lack any corroborative evidence, and that they do not constitute probative evidence of physical presence in the United States. Accordingly, the AAO finds that the applicant has failed to establish, by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after he turned fourteen.

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. The applicant has not met her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.¹

¹ The AAO notes that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.