

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

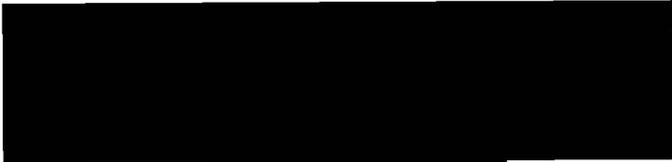
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*E 2*

**PUBLIC COPY**



FILE:

OFFICE: HOUSTON, TX

DATE: JUL 13 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:



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, Houston, Texas. The matter is now before the AAO on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 19, 1976, in Mexico. The applicant's father, [REDACTED] was born in Hidalgo County, Texas on November 5, 1938. The applicant's mother was born in Mexico, and she is not a U.S. citizen. The applicant's parents married in Mexico on September 22, 1967. The applicant presently seeks a Certificate of Citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), (now section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)), based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director determined that the applicant had failed to establish her father was physically present in the United States for ten years prior to the applicant's birth, at least five years of which were after he turned fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant has established by a preponderance of the evidence that her father (Mr. [REDACTED] was physically present in the United States for the requisite period set forth in the former Act, and that the applicant acquired citizenship through her father pursuant to 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 (9<sup>th</sup> Cir. 2000) (Citations omitted.) The applicant was born in Mexico in 1976. Section 301(a)(7) of the former Act therefore controls 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 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.

In the present matter, the applicant must establish that Mr. [REDACTED] was physically present in the U.S. for a period of ten years between November 5, 1938 and October 19, 1976, at least five years of which occurred after November 5, 1952, when Mr. [REDACTED] turned fourteen.

The record contains the following evidence relating to Mr. [REDACTED] physical presence in the U.S. prior to the applicant's birth on October 19, 1976:

An affidavit signed by Mr. [REDACTED] on July 2, 2002, stating that he was born in Hidalgo County, Texas on November 5, 1938, and that he lived in McAllen, Texas, Hidalgo County with his mother and siblings until sometime after his baptism in late 1944. Mr. [REDACTED] states that he and his family lived with their father in Tamaulipas, Mexico from late 1944 until 1968, and Mr. [REDACTED] states that he has lived in the U.S. from 1968 until the present time.

A Texas Delayed Certificate of Birth reflecting that Mr. [REDACTED] was born in Hidalgo County, Texas on November 5, 1938.

A Certificate of Baptism reflecting that Mr. [REDACTED] was baptized at the [REDACTED] Pharr, Texas on October 3, 1944.

A Texas Delayed Certificate of Birth reflecting that Mr. [REDACTED] sibling, [REDACTED] was born in Hidalgo County, Texas on March 7, 1942.

A Texas Attested Record of Birth Certificate reflecting that Mr. [REDACTED] sibling, [REDACTED] was born in Hidalgo County, Texas on December 26, 1935.

Texas birth and baptismal certificates reflecting that Mr. [REDACTED] other children were born in Texas between 1971 and 1975.

Texas car registration documentation reflecting that Mr. [REDACTED] registered his car in Texas in 1973.

Texas voter registration documentation reflecting that Mr. [REDACTED] was a registered voter in Texas in 1971.

Pay stubs and Social Security Administration earnings statement information reflecting that Mr. [REDACTED] earned a salary in the United States between 1975 and 1976.

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. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

The AAO notes the district director finding that the applicant established his father was physically present in the United States for a total of six years between 1971 and 1976. The AAO agrees that the evidence contained in the record establishes that Mr. [REDACTED] was physically present in the U.S. between 1971 and 1976. The AAO finds further that the totality of birth and baptismal certificate evidence submitted for Mr. [REDACTED] and his siblings establishes that it is probably true that Mr. [REDACTED] was physically present in the U.S. for approximately six years between his birth in November 1938 and his baptism in October 1944. Accordingly, the AAO finds that the applicant has established, by a preponderance of the evidence, that Mr. [REDACTED] met the physical presence requirements set forth in section 301(a)(7) of the former Act. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.