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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HARLINGEN, TX Date: NOV 21 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The record reflects that the applicant was born on October 19, 1956 in Mexico. The applicant's father, [REDACTED] was born a U.S. citizen on February 1, 1924 in Mexico. The applicant's mother, [REDACTED] was at the time of her birth, a citizen of Mexico. The applicant indicates that her parents were married on May 8, 1949. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her father.

"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 October 19, 1956. Therefore, she must establish her claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1956.

Section 301(a)(7) of the 1952 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.

The applicant must, therefore, establish that her father, [REDACTED] was a U.S. citizen at the time of her birth and that he met the physical presence requirements set forth above prior to her birth.

As previously noted, the record contains a copy of [REDACTED] certificate of citizenship indicating that he acquired U.S. citizenship at the time of his birth in 1924. Therefore, the record demonstrates that [REDACTED] was a U.S. citizen at the time the applicant was born.

To establish [REDACTED] presence in the United States for the requisite period, the applicant initially submitted copies of an order issued by the Headquarters Reception Center, Fort Sam Houston, Texas on November 20, 1943 rejecting [REDACTED] for military service; his Selective Service registration certificates for 1943 and 1948, his Selective Service Notice of Classification cards for these same years; his Form I-179, Immigration and Naturalization Service Identification Card, issued in 1959; two smallpox vaccination certificates from 1960 and 1965; his Social Security card; and two affidavits, one signed by [REDACTED] brother stating that they attended school and performed agricultural work between 1942 and 1960 in the Corpus Christi area and the other by his brother-in-law asserting that he and [REDACTED] worked together between 1952 and 1960 in Corpus Christi. The district director found the preceding evidence insufficient to establish that [REDACTED] had been physically present in the United States for a total of ten years, at least five of which followed his 14th birthday, noting that the affidavits were not supported by any documentary evidence. He denied the application accordingly.

On appeal, the applicant provides proof of [REDACTED] employment in the United States in the form of an Itemized Statement of Earnings from the Office of Central Operations, Social Security Administration. The

earnings statement reports U.S. income for [REDACTED] in the years 1946, 1948-1949, 1951-1956. When considered in concert with the previously submitted Selective Service documentation and the affidavits submitted by [REDACTED] brothers, the AAO finds the applicant to have provided sufficient evidence to establish that her father was physically present in the United States for ten years prior to her birth and that at least five of those years followed [REDACTED] 14th birthday on February 1, 1938. Accordingly, the applicant has met the requirements of section 301(a)(7) of the 1952 Act and has established that she was born a U.S. citizen on October 19, 1956.

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 met her burden in this proceeding and the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.