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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: HARLINGEN, TEXAS

Date:

OCT 25 2006

IN RE:

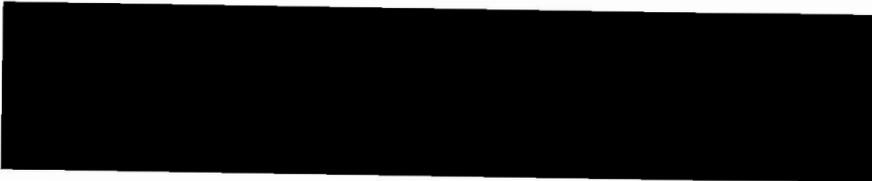
Applicant:



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, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 23, 1969 in Mexico. The applicant's mother was born on June 18, 1948 in Rio Rico, Texas, and she is a U.S. citizen. The record contains no information regarding the applicant's father, and the applicant does not assert that he was a U.S. citizen. 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), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found that, based on the evidence in the record, the applicant failed to establish that his mother resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after age fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, counsel for the applicant contends that the record contains sufficient evidence to show that the applicant's mother has resided in the United States for her entire life, thus she meets the physical presence requirement of section 301(a)(7) of the former Act. *Statement from Counsel*, dated November 9, 2005.

"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 in this case was born in Mexico in 1969. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.

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.

The applicant must therefore establish that his mother was present in the United States for ten years between her birth on June 18, 1948 and the applicant's birth on May 23, 1969, five of which must have been between the applicant's mother's fourteenth birthday on June 18, 1962 and the applicant's birth on May 23, 1969. Section 301(a)(7) of the former Act.

The applicant has provided documentation to reflect the location of his mother prior to his birth, including: statements from the applicant's mother; letters verifying the attendance of the applicant's mother and her siblings at a school in Rio Rico, Texas; birth and baptismal certificates for the applicant's mother and her siblings; statements from the applicant's mother's aunt, uncles, and cousin; copies of the applicant's mother's social security card, citizenship card, and Texas identification card, and; the applicant's mother's marriage certificate.

Upon review, the record contains sufficient evidence to show by a preponderance that the applicant's mother resided in Rio Rico, Texas until her marriage on March 10, 1964, when the applicant's mother was age 16.

Such evidence includes the applicant's mother's birth certificate that reflects that she was born in Rio Rico, a letter from the Principal of the elementary school Amado Nervo in Rio Rico confirming that the applicant's mother attended classes there from 1954 to 1960, and statements from the applicant's mother and her relatives. It is noted that the applicant has submitted documentation to reflect that his mother's siblings also resided in Rio Rico, including birth certificates, baptismal certificates, and birth certificates. Such evidence lends weight to a finding that the applicant's mother also resided in Rio Rico.

However, the record contains inconsistent evidence regarding whether the applicant's mother resided in the United States after she was married on March 10, 1964 and prior to the applicant's birth. The applicant's mother was married in Rio Bravo, Tamaulipas, Mexico. *Marriage Certificate for Applicant's Mother*, dated March 10, 1964. On August 19, 2003, the applicant's mother executed a statement in which she provided the following:

I lived in Rio Rico, Texas from June 18, 1948 to March 10, 1964. I then moved to Rio Bravo, Tamps., Mexico where I resided until October 19, 1981. I have continuously resided in the United States from October 19, 1981 to the present.

Five of the applicant's mother's children, including the applicant, were born in Rio Bravo, Mexico from 1966 to 1978. The applicant's mother's sixth child was born in Weslaco, Texas. The locations of the births of the applicant's mother's children are consistent with her statement of August 19, 2003 regarding her places of residence.

In connection with the present appeal, the applicant's mother states that she resided in Rio Rico from her birth until 1981. *Statement from Applicant's Mother*, dated November 9, 2005. She explains that Rio Rico did not have postal service, thus her husband used his mother's address in Rio Bravo. She states that, due to a lack of services and medical care in Rio Rico, she had to travel to Rio Bravo for various needs. She provides that her children were born in Rio Bravo because Rio Rico had no midwives or doctors. She states that she visited her mother-in-law in Rio Bravo.

The applicant provided affidavits from his mother's aunt, uncles, and cousin. Each of these statements are brief and identical in content, providing that "I have known [the applicant's mother] since she was born on June 18, 1948. She was born in Rio Rico[,] Texas and we lived near where she was born in the same town. . . . She lived in Rio Rico till [sic] October of 1981, when she then moved to Weslaco, [Texas] then to Donna Texas."

As noted by the district director, the affidavits from the applicant's mother's aunt, uncles, and cousin lack adequate detail to establish a basis for the statements they make. As all of the statements are brief and identical, they do not serve as conclusive evidence that the applicant's mother in fact resided in Rio Rico after her marriage on March 10, 1964.

The statements from the applicant's mother are inconsistent. She initially stated that she resided in Mexico from March 10, 1964 until October 19, 1981, yet she now claims that she resided in the United States during that period. This inconsistency is material. If the applicant's mother was residing outside the United States from March 10, 1964 until October 19, 1981, she was not present in the United States for five years after reaching the age of 14 and prior to the applicant's birth, as required by section 301(a)(7) of the former Act. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective

evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant's mother was confronted regarding her prior statement in an interview on May 9, 2005. The applicant's mother testified that her statement from August 19, 2003 was likely an error, because she only traveled to Rio Bravo to have her children and to gain other services. However, upon review of the applicant's mother's statement of August 19, 2003, it cannot be concluded that her indication of her locations of residence was erroneous due to a translation error or other typographical mistake. The statement clearly provides that she lived in Texas, then she "moved to Rio Bravos, Tamps., Mexico where [she] resided until October 19, 1981." *Statement from Applicant's Mother*, dated August 19, 2003. If the applicant did not change her location, it is unclear why the brief statement would clearly indicate such.

It is noted that the applicant has provided no other evidence to reflect that his mother resided in Rio Rico from March 10, 1964 until the applicant's birth.

Based on the foregoing, the applicant has shown that his mother resided in the United States from her birth until March 10, 1964, and again from 1981 until the present. As the applicant's mother reached age 14 on June 18, 1962, the record only establishes that she was physically present in the United States for approximately one year and nine months after reaching age 14 and prior to the applicant's birth on May 23, 1969. Thus, the applicant has failed to establish that his mother resided in the United States for ten years prior to his birth, at least five years of which occurred after age fourteen, as required by section 301(a)(7) of the former Act. For this reason, the application may not be approved.

The regulation at 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 not met that burden. Accordingly, the applicant has not shown that he is eligible for citizenship under section 301(a)(7) of the former Act, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.