



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN DIEGO, CALIFORNIA

Date: SEP 27 2006

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to § 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.

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, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on March 16, 1973 in Mexico. The applicant's mother was born in California on April 25, 1955, and she is a United States citizen. There is no evidence on the record that the applicant's father, who was born in Mexico, is a U.S. citizen. The applicant's parents were married at the time of his birth. The applicant seeks a certificate of citizenship pursuant to § 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 the applicant had failed to establish that his mother had resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] turned fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, the applicant asserts that the provisions of § 301(g) of the Act as amended apply retroactively to his claim; thus, his mother only had to accrue five years of physical presence, two years of which were after her fourteenth birthday, prior to the applicant's birth. Counsel for Citizenship and Immigration Services (CIS) also submits a brief on appeal. CIS counsel states that the amended provisions of the Act now found at § 301(g) do not apply retroactively with regard to the length of U.S. physical presence required of the applicant's U.S. citizen parent. The AAO concurs with the statements of CIS counsel and with the district director's decision in this matter.

“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). On appeal, CIS counsel points out that pursuant to Pub.L. 99-653 § 23(f), the provisions that amended § 301(a)(7) of the former Act in 1986 only apply to individuals born on or after November 14, 1986. The applicant in this case was born in 1973; therefore, § 301(a)(7) of the former Act, not § 309 of the current Act, controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

(g) 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 five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization...by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date

On appeal, the applicant asserts that the above section of law specifically states that it applies retroactively. The AAO notes, however, that the last sentence of the above citation indicates that only the proviso applies to persons born on or after December 25, 1952. The proviso in question allows persons who served abroad in the U.S. armed forces or worked for the U.S. government to count time spent doing such work toward their total U.S. physical presence. The proviso is retroactive, but the rest of § 301(g), including its more lenient physical presence requirement, is not.

The applicant must therefore establish that his mother was physically present in the United States for at least ten years between her birthdate on April 22, 1955 and his birthdate on March 16, 1973, and that five of those years occurred after her fourteenth birthday on April 22, 1969. Since the applicant was born when his mother was seventeen years old, however, it is not possible for her to meet the physical presence requirements, in that the applicant was born before five years had passed after his mother's fourteenth birthday.

As noted above, the amended provisions of § 301(g) do not apply to the applicant's situation. 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 failed to establish that, prior to his birth, his U.S. citizen mother was physically present in the United States for five years after her fourteenth birthday. Accordingly, the applicant is not eligible for citizenship under § 301(a)(7) of the former Act, and the appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.