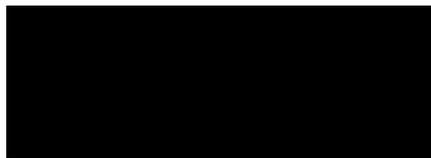


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U.S. Citizenship
and Immigration
Services

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FILE:  Office: ST. LOUIS, MO Date: AUG 17 2007

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, St. Louis, Missouri 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 27, 1972 in the Philippines. The applicant's birth certificate indicates that her parents are [REDACTED]. The applicant's parents were married on January 16, 1966. The applicant's father passed away on November 1, 2000. His death certificate indicates that he was a citizen of the Philippines. The applicant's mother was born on November 14, 1942, and acquired U.S. citizenship at birth under section 201 of the Nationality Act of 1940. The applicant's mother has resided in the United States since 1998. The applicant was admitted to the United States as a B-2 Visitor on August 24, 2005. The applicant seeks a Certificate of Citizenship based upon a claim of derivative citizenship through her mother.

The district director concluded that the applicant had failed to establish that her mother had the requisite period of physical presence in the United States to be eligible to derive citizenship under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). The district director further concluded that the applicant did not derive citizenship under any other provision of the Act. The application was denied accordingly.

On appeal, the applicant through counsel states that she has "further evidence in this matter . . . specifically, we can show that both her mother and her father (deceased) are/were U.S. citizens." See Form I-290B, Notice of Appeal. After the appeal was filed, applicant's counsel, [REDACTED] submitted a letter withdrawing her representation and noting that her co-counsel, [REDACTED] was no longer able to practice law. On December 7, 2007, the applicant submitted a letter notifying CIS that [REDACTED] was no longer representing her in this matter.¹ No further evidence or argument was received from either the applicant's former counsel or the applicant herself.

The AAO notes that "[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 on May 27, 1972. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to her citizenship claim.

Section 301(a)(7) of the former Act states 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

¹ The AAO will therefore treat this case as "self-represented."

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that her mother was physically present in the United States for at least 10 years prior to May 27, 1972, five of which after November 14, 1956 (when her mother turned 14 years old).

In support of her citizenship claim, the applicant submitted her mother's school and tax records, and other pertinent records. The applicant also submitted a copy of her mother's Certificate of Citizenship, U.S. passport, birth certificate, a marriage certificate for her marriage to [REDACTED], and her social security and other identity cards; a copy of her father's death certificate; a copy of her own birth certificate, passport, identity card, and marriage certificate; and a copy of her parent's marriage certificate.

The relevant evidence in the record indicates that the applicant's mother has been physically present in the United States since 1998. The record further indicates that the applicant's mother resided in the Philippines from 1949 to 1955 (according to the elementary school records) and from 1955 to 1959 (high school records). She married the applicant's father in 1966 in the Philippines. The record does not contain any evidence to suggest that the applicant's father had any claim to U.S. citizenship.

Based upon a careful review of the evidence, the AAO finds that the applicant has failed to establish that her mother was physically present in the United States for the required 10 years prior to the applicant's birth in 1972.

The AAO notes that the applicant is not eligible for derivative citizenship under any other provision of the Act. The Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The provisions of the CCA, however, are not retroactive, and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

The applicant is also not eligible for citizenship under section 321(a) of the former Act, 8 U.S.C. § 1432, because, among other things, she has not been admitted as a lawful permanent resident.²

² Section 321 of the former Act, 8 U.S.C. § 1432, provides that

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The AAO finds that the applicant has not met her burden of proof to establish eligibility for citizenship. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.