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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: DENVER, CO Date: DEC 27 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 Form N-600, Application for Certificate of Citizenship (N-600 Application) was denied by the Field Office Director, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant was born in Mexico on February 19, 1982. The applicant's mother was born in Mexico on January 19, 1958. The applicant claims that his mother acquired U.S. citizenship at birth through her U.S. citizen father, the applicant's maternal grandfather. The applicant's father was born in Mexico, and he is not a U.S. citizen. The applicant's parents married in Mexico on March 18, 1974. 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) (now section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director determined the applicant had failed to establish that his mother acquired U.S. citizenship at birth, or that his mother was physically present in the United States or its outlying possessions for a period of ten years prior to the applicant's birth, at least five years of which were after she reached the age of fourteen. The application was denied accordingly.

On appeal the applicant asserts through counsel: 1) that he has established by a preponderance of the evidence that his mother acquired U.S. citizenship at birth through her U.S. citizen father; and 2) that his mother was physically present in the United States for the requisite time period set forth in 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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (Citations omitted). The applicant's mother (Mrs. [REDACTED]) was born in Mexico on January 19, 1958. Section 301(a)(7) of the former Act therefore applies to her citizenship at birth claim. The applicant was born in Mexico on February 19, 1982. Section 301(a)(7) of the former Act thus also applies to his acquisition of citizenship at birth 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 . . . 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.

In the present matter, the applicant must first establish that his mother acquired U.S. citizenship through her father at birth. The applicant must then demonstrate that his mother met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act.

U.S. passport and affidavit of birth evidence contained in the record reflects that Mrs. [REDACTED] father ([REDACTED]) was born in Arizona on July 2, 1933. The applicant has thus established by a preponderance of the evidence that Mrs. [REDACTED] father was a U.S. citizen.

The applicant submitted the following evidence pertaining to Mrs. [REDACTED]'s status as a U.S. citizen:

A Mexican birth certificate reflecting that Mrs. [REDACTED] was born in Imuris, Sonora, Mexico on January 19, 1958, and that she was the legitimate child of [REDACTED] y [REDACTED]. The birth certificate indicates that Mrs. [REDACTED] parents were domiciled in Sonora, Mexico when she was born.

A Mexican marriage certificate reflecting that Mrs. [REDACTED]'s parents were married in Colonia Morelos, Sonora, Mexico on March 29, 1957, and that they resided in Nogales, Sonora, Mexico at the time of their marriage.

A Certificate of Baptism reflecting that [REDACTED] was baptized in Nogales, Arizona on July 16, 1933.

A letter from [REDACTED] in Nogales, Arizona, stating that on June 23, 1945, [REDACTED] completed elementary school in accordance with the Technical program in the State of Sonora.

A letter dated April 26, 2005, signed by [REDACTED], stating that she knew [REDACTED] in Nogales, Arizona when they were young, and that they attended [REDACTED] in Nogales, Arizona in the early 1940s.

A letter dated January 11, 2005, signed by [REDACTED], stating that he attended [REDACTED] from 1939 to 1945.

A letter signed by the Principal of Jr. High School No. 1, "[REDACTED]" in Nogales, Sonora, reflecting that [REDACTED] was enrolled in the Jr. High School between 1947 and 1948, and that his domicile was [REDACTED] Nogales, Arizona.

A letter signed on January 24, 2005, by [REDACTED] stating that [REDACTED] was his uncle and that he visited him at [REDACTED], in Nogales, Arizona between 1945 and the mid-1950s.

Two letters signed on April 12, 2005, by [REDACTED] cousins, [REDACTED] stating that they lived near [REDACTED] and that he resided at [REDACTED] between 1945 and 1956.

A letter signed on April 12, 2005, by [REDACTED] stating that [REDACTED] and his wife lived with her in Los Angeles, California in 1957.

An affidavit signed on February 23, 2006, by [REDACTED], stating that she is [REDACTED]'s wife, and that they met in Mexico in 1955 and were married in Sonora, Mexico on March 29, 1957. She states that she and [REDACTED] lived together in [REDACTED], Arizona for almost their entire marriage, except for two occasions when they lived in Los Angeles, California (in 1957 and in 1967.) She states that she and her husband had seven children, and that all of the children were born in Mexico (between 1958 and 1962, and in 1981) because their family doctor was in Mexico.

Copies of property taxes and home insurance policies for [REDACTED] home at [REDACTED]

Sonoita Ave., Nogales, Arizona, between August 1958 and August 1961.

In addition to the above evidence, the applicant submitted a copy of a February 20, 2007, Department of State, U.S. passport denial letter. The letter reflects that Mrs. [REDACTED] was denied a U.S. passport because she failed to present sufficient evidence establishing that her father was physically present in the United States for five years after his fourteenth birthday on July 2, 1947, and prior to Mrs. [REDACTED]'s birth on January 19, 1958.

The applicant also submitted a copy of an October 5, 2005, Immigration Judge Order terminating removal proceedings against the applicant on the basis that he had "presented sufficient evidence tending to show he acquired U.S. citizenship at birth."

The regulation provides at 8 C.F.R. § 341.2(c) 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 applicant asserts through counsel that the affidavit and documentary evidence contained in the record establish by a preponderance of the evidence that [REDACTED] met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act, and that the applicant's mother was thus a U.S. citizen at birth. In addition counsel indicates that U.S. Department of Homeland Security (DHS) is barred by the doctrine of collateral estoppel, from challenging the applicant's U.S. citizenship status because an immigration judge terminated removal proceedings against the applicant based on an unappealed finding that his mother was a U.S. citizen at birth, and that she met the statutory requirements to transmit citizenship status to the applicant.

The AAO finds the applicant's assertion that DHS/CIS is barred by the doctrine of collateral estoppel from challenging the applicant's citizenship status to be unpersuasive. The AAO notes that an immigration judge does not have authority to declare that an alien is a citizen of the United States. Such jurisdiction rests with U.S. Citizenship and Immigration Services (CIS) and with the federal courts. *Minasyan v. Gonzalez*, 401 F.3d 1069 (9<sup>th</sup> Cir. 2005.) Furthermore, regulations specify at 8 C.F.R. § 341.3(c), that CIS has jurisdiction over certificate of citizenship proceedings, and that the burden of proof is on the alien to establish his or her claim to U.S. citizenship by a preponderance of the evidence. Upon review of the immigration judge order contained in the record, the AAO notes that the immigration judge did not make a finding regarding the applicant's U.S. citizenship status. Rather, the Order contained in the record reflects that the immigration judge terminated removal proceedings against the applicant based on a finding that the evidence tended to show that the applicant acquired citizenship at birth. In deportation or removal proceedings, the government must prove alienage by clear, unequivocal and convincing evidence. *Murphy v. INS*, 54 F.3d 605 (9<sup>th</sup> Cir. 1995.) In the present matter, the immigration judge terminated proceedings against the applicant based on a determination that the government had failed to meet its burden of proving the applicant's alienage and removability by clear, convincing and unequivocal evidence.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish by a preponderance of the evidence that his maternal grandfather, [REDACTED] was physically present in the United States for at least five years after he turned fourteen, on July 2, 1947, and prior to Mrs. [REDACTED] birth on January 19, 1958.

U.S. passport and certificate of baptism evidence contained in the record establish by a preponderance of the evidence that [REDACTED] was born in the United States, and that he was physically present in the United States in July 1933. The affidavits from co-students combined with the independent school

documentation submitted by the applicant establish further that it is probably true that [REDACTED] was physically present in the United States between 1939 and 1948.

The AAO finds, however, that the evidence submitted by the applicant fails to establish by a preponderance of the evidence that [REDACTED] was physically present in the United States for five years between 1948 and 1958. The AAO notes that the Arizona home property tax and insurance policies contained in the record pertain to [REDACTED]'s residence in the United States from August 1958 onwards, after the applicant's mother was born. The record lacks any pre-1958 home property ownership, tax or insurance policy information. Furthermore, Mrs. [REDACTED] birth certificate indicates that both of her parents were domiciled in Sonora, Mexico when she was born on January 19, 1958. The marriage certificate for Mrs. [REDACTED] parents also reflects that [REDACTED] was domiciled in Sonora, Mexico at the time of his marriage to the applicant's mother on March 29, 1957. In addition, the AAO notes that the applicant's maternal grandmother lived in Mexico prior to her marriage to [REDACTED]. Her personal knowledge of [REDACTED] U.S. physical presence prior to their marriage in 1957 has thus not been established. Additionally, the AAO notes that the affidavits from Mr. [REDACTED]'s cousins, nephew, and sister-in-law are vague and contain no corroborative evidence or information to substantiate their claims. Accordingly, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that his mother is a U.S. citizen, or that she may transmit U.S. citizenship to the applicant.

The AAO notes that the applicant's U.S. citizenship claim would have failed even if he had established that his mother was a U.S. citizen, as the evidence fails to establish by a preponderance of the evidence that Mrs. [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth on February 19, 1982, at least five years of which occurred after she turned fourteen on January 19, 1972.

Although a school certificate contained in the record reflects that Mrs. [REDACTED] completed kindergarten in the United States on May 22, 1964, the record contains no other independent documentary evidence of Mrs. [REDACTED] physical presence in the United States. The affidavits signed by Mrs. [REDACTED] and her mother state that, except for a two-year period between 1974 and 1976, Mrs. [REDACTED] lived in the United States with her parents (or her sister in 1957.) This information is contradicted by domicile information contained in Mrs. [REDACTED] marriage certificate, which reflects that she married in Mexico on March 18, 1974, at the age of 16, and that at the time of her marriage she resided with her parents at [REDACTED], Nogales, Sonora, Mexico. The applicant's birth certificate additionally reflects that Mrs. [REDACTED] was domiciled in Nogales, Sonora, Mexico at the time of the applicant's birth on February 19, 1982. The War Ration book issued to Mrs. [REDACTED] reflecting that her address was at [REDACTED] in Nogales, Arizona, lacks probative value as it is undated, and the affidavit from Mrs. [REDACTED] friend at church pertains only to Mrs. [REDACTED] physical presence in the United States after the applicant's birth. Furthermore, the affidavits from Mrs. [REDACTED] uncle, aunt and cousin, indicating that she lived with them in the United States in: 1967; 1976-1978; and January 1979-January 1982, respectively, lack probative value, as they are vague and contain no corroborative evidence or information to substantiate their claims.

The regulation at 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. The AAO finds that the applicant in the present matter has not met his burden of establishing that his mother was a U.S. citizen or that she was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.