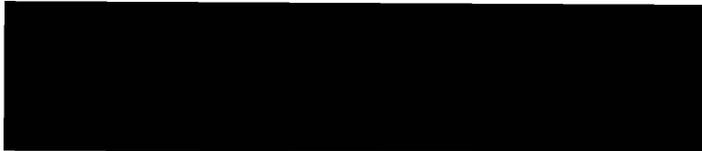




U.S. Citizenship
and Immigration
Services

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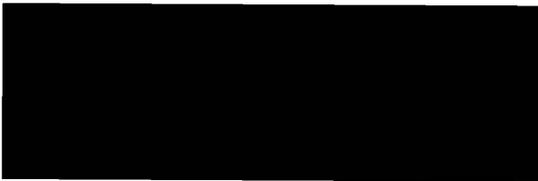
Office: HARLINGEN, TEXAS

Date: FEB 02 2007

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:



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 November 27, 1955 in Mexico. The record reflects that her late father was born in Texas on October 24, 1928 and that he was a United States citizen. The applicant's mother was born in Mexico and is not a U.S. citizen. The record reflects that the applicant's parents were married in Mexico on December 30, 1951. The applicant presently 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 she acquired U.S. citizenship at birth through her father.

The district director found that, based on the evidence in the record, the applicant had failed to establish that her father had resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after her father turned fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, counsel asserts that the district director failed to consider each and every piece of evidence submitted. Counsel also contends that the district director did not evaluate the the weight of all the evidence in light of the applicant's burden of proof, which does not require that the facts be proven beyond any doubt. Counsel maintains that a preponderance of the evidence establishes the applicant's father's physical presence in the United States for the required period.

“When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship.” *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

“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 in 1955; hence, § 301(a)(7) of the former Act controls her 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:

[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.

The applicant must therefore establish that her father was physically present in the United States for ten years between his date of birth in 1928 and her date of birth in 1955, and that five of those years were after the applicant's father turned fourteen years of age in 1942.

The record contains the following evidence relating to the applicant's father's physical presence in the United States during the requisite time period:

A delayed birth certificate issued in 1939 showing the applicant's father's date of birth as October 24, 1928;

A Certificate of Baptism showing the applicant's father's birthplace as Brownsville, Texas, his date of birth as October 24, 1927, and his date of baptism as September 29, 1928;

Certificates of Baptism for the applicant's father's two younger sisters and an April 22, 1942 letter from the City Secretary, Brownsville, Texas that certifies their dates of birth, establishing the presence of the applicant's paternal grandmother (and presumably the applicant's father) in Texas in 1931, 1933, and 1934;

A letter dated August 15, 2005 from her father's elder sister, who was born in the United States in 1925, describing the employment of the applicant's father in the United States from May through September from 1945 to 1949;

An affidavit dated December 8, 2005 by her father's elder sister stating that he was born and raised in Brownsville, Texas, and that he lived his entire life in Texas and visited his family in Mexico;

A letter dated December 13, 2005 by the applicant's cousin, describing childhood memories (pre-1955) relating to the presence of the applicant's father in the United States, including her cousin's recollection that the applicant's father visited his Brownsville home often;

A 1931 Brownsville directory page listing the applicant's paternal grandparents' names;

Copies of Cameron County land records from 1939 and 1940 reflecting that the applicant's paternal grandmother paid off a portion of a lien she owned on real property as a result of a 1935 lawsuit.

It is noted that the applicant's father's birth certificate, marriage certificate, and death certificate indicate that he was born in 1928. The baptismal certificate notes that he was born in 1927; however, as the majority of the evidence shows his year of birth as 1928, the AAO will accept the October 24, 1928 birth date. Although the evidence appears to show that the applicant's father was physically present during his early childhood, there is insufficient evidence establishing the required five years of presence between 1942 and 1955.

The only document that specifically mentions the applicant's father's presence during the relevant period is the letter written by his older sister. She states that she and the applicant's father worked together during the summers from 1945 to 1949. While the letter establishes his presence for several months each year, there is no detailed description of where the applicant's father was and what he was doing during those years from September to May. The AAO finds that the evidence lacks information regarding the applicant's father's activities and location during the 1940's and 1950's, prior to the applicant's birth in 1955.

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. Based on the concerns noted above, the AAO finds that the applicant failed to establish by a preponderance of the evidence that her father was physically present in the United States for ten years between October 24, 1928 and November 27, 1955, at least five years of which occurred after October 24, 1942. 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.