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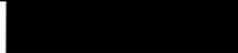
U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date:

JAN 09 2007

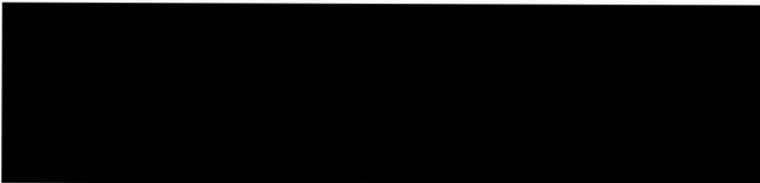
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 of the Revised Statutes of the United States, 1878, as amended

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.

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, 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 August 10, 1939 in Mexico. The applicant's father, [REDACTED] was born on February 15, 1915 in San Benito, Texas. The applicant's mother, [REDACTED] was, at the time of her birth, a citizen of Mexico and the record indicates that she retains that citizenship. The applicant's parents were married in 1938. The applicant seeks a certificate of citizenship based on her birth to a U.S. citizen father.

The director denied the Form N-600, Application for Certificate of Citizenship, based on his determination that the record did not establish that the applicant's U.S. citizen father had been physically present in the United States for a continuous period of one year prior to her birth, as required by section 301(e) of the Act or that she had satisfied the residency requirements for retention of U.S. citizenship.

On appeal, counsel contends that the section 301(e) of the Act is not applicable to the applicant. He asserts that, as the applicant was born in 1939, the provisions of the Nationality Act of 1934 are controlling. He further states that the applicant has met the residency requirements for retention of citizenship through constructive presence, citing Board of Immigration Appeals (BIA) decisions in support of his position.

"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). As the applicant was born in 1939, she must satisfy the requirements of section 1993 of the Revised Statutes of the United States, 1878, as amended by the successive immigration statutes.

Section 1993, as initially amended by the Nationality Act of 1934, stated that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization.

The above residency requirements for the retention of U.S. citizenship have been successively amended by section 201(g) of the Nationality Act of 1940, section 301(b) and (c) of the Immigration and Nationality Act of 1952 (1952 Act), and the Act of October 27, 1972. As a result, individuals born to one U.S. citizen parent between May 24, 1934 and January 13, 1941 may now satisfy retention requirements with five years of continuous physical presence in the United States between the ages of 14 and 28 or, if they arrived in the United States after October 27, 1972, two years of continuous physical presence during the same time frame. As the applicant states that she entered the United States in 1994 as a nonimmigrant, she must satisfy the second of these physical presence requirements.

To establish that she is eligible to acquire citizenship through her U.S. citizen father, the applicant must, therefore, demonstrate that her father was a U.S. citizen at the time of her birth and resided in the United States prior to that date. She must also prove that she was physically present in the United States for two continuous years between 14 and 28 years of age and, during that time, was outside the United States for less than 60 days. The record offers the following evidence to support the Form N-600:

- The applicant's birth certificate establishing that she was born on August 10, 1939 in Mexico to [REDACTED] and [REDACTED]
- A birth certificate for [REDACTED] which indicates he was born on February 15, 1915 in San Benito, Texas.
- Mr. [REDACTED]'s baptismal certificate from [REDACTED] in San Benito, Texas issued in 1978. The baptismal certificate indicates that the church's baptismal register shows Mr. [REDACTED] to have been baptized on June 27, 1915.
- A marriage certificate for the applicant's parents issued January 4, 1983 by the State of Tamaulipas, Mexico, which states that their marriage was registered in 1938.
- An affidavit from the applicant's uncle [REDACTED] who indicates that he and the applicant's father worked together in Texas in 1931. He attests to [REDACTED] presence in the United States prior to 1937.
- An affidavit sworn by the applicant on May 16, 2006 in which she states that she was not aware until March 2005 that she had a claim to U.S. citizenship through her father. She indicates that she filed the Form N-600 as soon as she was made aware of her potential eligibility.

Based on the above evidence, the AAO finds the applicant to have established that, at the time of her birth, her father was a U.S. citizen and had previously resided in the United States, as required by section 1993 of the Revised Statutes of the United States, 1878. Mr. [REDACTED]'s birth certificate documenting his birth in San Benito Texas on February 15, 1915 and his baptismal certificate showing him to have been baptized in San Benito on June 27, 1915 are sufficient evidence of residence in the United States prior to the applicant's birth. The record does not, however, demonstrate that the applicant has been physically present in the United States for the requisite period of time required to acquire U.S. citizenship through her father.

The Form N-600 states that the applicant entered the United States on September 9, 1994 as a nonimmigrant, when she was 55 years of age. Accordingly, the applicant has not established that she was physically present in the United States for two years between the ages of 14 and 28, as required by the Act of October 27, 1972.

Counsel on appeal contends that the applicant has met the citizenship retention requirements imposed on her through the principle of constructive presence. He asserts, as stated in the applicant's affidavit submitted on appeal, that she was unaware of her claim to U.S. citizenship until shortly before filing the Form N-600. Accordingly, he reasons, she should be deemed to have been constructively physically present in the United States for the purposes of complying with citizenship retention requirements. He cites the findings of *Matter*

of Yanez-Carrillo, 10 I&N Dec. 366 (BIA 1963) and *Matter of Farley*, 11 I&N Dec. 51 (Asst. Comm. 1965).

The applicant has submitted a sworn statement stating that she was unaware of her potential eligibility for U.S. citizenship prior to March 2005, when her daughter contacted counsel about obtaining lawful immigration status for herself. The applicant's affidavit, is not, however, sufficient proof that she had no knowledge of her possible claim to U.S. citizenship prior to filing the Form N-600. Although the AAO does not find the BIA decisions referenced by counsel to address the issues raised in the present case, the AAO does note that in both cases, the applicants' lack of knowledge regarding their citizenship claims and their subsequent attempts to comply with the retention requirements of section 301(b) of the 1952 Act were documented through the Department of State visa issuance process. In this case, there is no such evidence to support the applicant's claim to have been unaware of her potential eligibility for U.S. citizenship until March 2005. The applicant has submitted a copy of a nonimmigrant visa issued to her in 1971 and has stated that she entered the United States in 1994 in nonimmigrant status. The applicant's 1971 nonimmigrant visa application and 1994 nonimmigrant admission to the United States do not, however, prove that she was unaware that she could acquire U.S. citizenship through her father.

The applicant's affidavit does not, by itself, carry sufficient evidentiary weight to prove that she was ignorant of her claim to U.S. citizenship prior to March 2005. Therefore, the AAO will not consider whether such ignorance, if demonstrated, could establish that the applicant was constructively physically present in the United States for two years between her 14th and 28th birthdays, as required to satisfy the retention requirements established by the Act of October 27, 1972. Accordingly, the appeal will be dismissed.

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden.

ORDER: The appeal is dismissed.