



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 301(a)(7) of the
Immigration and Nationality Act of 1952, 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 July 28, 1979 in Mexico. The applicant's mother, [REDACTED], was born on August 10, 1939 in Mexico. The applicant's father, [REDACTED] was also born in Mexico on February 6, 1921. The applicant's parents married on December 30, 1957. The applicant seeks a certificate of citizenship based on the claim that she was born the daughter of two U.S. citizens.

The director denied the instant Form N-600, Application for Certificate of Citizenship based on his denial of the Form N-600s filed by the applicant's parents. On appeal, counsel contends that the applicant's parents are entitled to certificates of citizenship and that they were physically present in the United States prior to her birth.

In a separate proceeding, the AAO has determined that the applicant's father acquired citizenship at birth through his U.S. citizen mother. The applicant's mother was not similarly successful in establishing her claim to U.S. citizenship. Accordingly, the applicant's potential eligibility for a certificate of citizenship is as an individual born outside the geographical United States or one of its possessions to a U.S. citizen and a citizen of a third country.

"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 on July 28, 1979. Therefore, she must establish her claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1979.

Section 301(a)(7) of the 1952 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.

The record contains a copy of the applicant's birth certificate, which establishes that she was born in Mexico on July 28, 1979 to [REDACTED] who has been found to have acquired U.S. citizenship at birth, and [REDACTED], a citizen of Mexico. Therefore, the only issue that remains before the AAO is whether the applicant's father, prior to her birth, was physically present in the United States for a period of at least ten years, five of which followed his 14th birthday.

The record contains no documentary evidence to prove that Mr. [REDACTED] was physically present in the United States prior to the applicant's birth. Instead, the applicant seeks to satisfy the physical presence requirement of section 301(a)(7) with a February 17, 2005 affidavit sworn by her mother. Ms. [REDACTED] states that when she married the applicant's father in 1957, he regularly traveled to Brownsville, Texas and that during the first years of their marriage, they both often traveled to Brownsville, remaining there for weeks at a time. Their trips to Brownsville were not as frequent once they began having children in 1962.

The submitted affidavit does not, however, establish that the applicant's father was in the United States prior to her birth. Without any type of corroborating evidence – e.g., employment records, including pay stubs/receipts – that would place the applicant's father in the United States prior to 1979, Ms. [REDACTED] de [REDACTED] statement is insufficient proof of her husband's physical presence in the United States. Moreover, Ms. [REDACTED] statement lacks the detail necessary to determine the length of time she claims that Mr. [REDACTED] spent in the United States prior to his daughter's birth. The applicant has not, therefore, demonstrated that, prior to her birth, her father was physically present in the United States for periods totaling at least ten years, as required by section 301(a)(7) of the 1952 Act. 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 in this proceeding.

ORDER: The appeal is dismissed.