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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*Ez*

**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: HARLINGEN, TX

Date: JAN 30 2007

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the 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 application was initially denied by the District Director, San Antonio, Texas on July 16, 1979. On November 16, 1992, the petitioner filed a second application, treated by the District Director, Harlingen, Texas as a request for a motion to reopen. The director affirmed the denial of the application on August 19, 1998 and the applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the district director for further consideration. On August 8, 2006, the director denied the application and certified his decision to the AAO. The director's decision will be affirmed. The application will be denied.

The record reflects that the applicant was born on April 29, 1958 in Mexico. The applicant's mother, [REDACTED] was born in Coachella, California on September 27, 1928. The applicant's father, [REDACTED] was, at the time of her birth, a citizen of Mexico and the record does not indicate that he subsequently acquired another nationality. The applicant's initial Form N-600, Application for Certificate of Citizenship, indicated that her parents were married in 1953 in Matamoros, Mexico; her subsequent Form N-600 stated that her parents never married. The applicant seeks a certificate of citizenship based on the claim that she was born out of wedlock to a U.S. citizen mother.

The AAO turns first to the issue of the marital status of the applicant's parents, a critical element in determining the requirements she must meet to establish eligibility for a certificate of citizenship.

The district director denied the application under section 301(a)(7) of the 1952 Act, finding the applicant to have submitted insufficient evidence to overcome the 1979 legacy Immigration and Naturalization Service (INS) determination that her parents were married at the time she was born and, therefore, to have failed to establish that her mother had at least ten years of physical presence in the United States prior to her birth. The AAO remanded the application to the district director because it found that the record did not contain all of the evidence he referenced in the denial or adequately explain all aspects of the decision. In his subsequent consideration of the evidence, the director has remedied the previously-identified deficits. As discussed below, the AAO concurs in the director's determination that the evidence submitted by the applicant to establish an out of wedlock birth is insufficient to overcome the statements and evidence she previously provided to establish her legitimacy.

The evidence initially submitted by the applicant to establish her birth includes:

- The Form N-600 filed in 1979 and corrected at the time of the applicant's interview to reflect the date and place of her parents' marriage as having occurred in 1953 in Matamoros, Mexico.
- A Mexican birth certificate indicating that the applicant's April 29, 1958 birth was registered on September 7, 1959. The certificate, submitted at the time of filing describes the applicant as legitimate and reports her parents, [REDACTED] and [REDACTED], as living in Ej. Prisciliano Delgado, Tamaulipas.
- An excerpt from the baptismal register of the Parish of Our Lady of San Juan, prepared on May 17, 1978, which indicates that the applicant was baptized on September 6, 1959 as the daughter of [REDACTED] and [REDACTED] who were advised of their spiritual obligation and relationship toward the applicant.

- An August 2, 1978 letter, which appears to have been written by the applicant, although it is signed with her mother's name, stating that [REDACTED] marriage certificate was destroyed in a storm and that she was divorced from her husband on December 2, 1958.

Counsel contends that this evidence is overcome by other information in the record:

- Birth certificates for two of the applicant's half-siblings, born in 1950 and 1956, to the applicant's father and [REDACTED]. Counsel asserts that it is not believable that [REDACTED] would have terminated his first marriage to enter into another that produced children and yet continue to have children with his ex-wife. He states that the only believable fact pattern is that the applicant's mother was [REDACTED] girlfriend whom he was seeing while married to M. [REDACTED].
- An October 13, 1993 affidavit sworn by [REDACTED], who attests that he lived with the applicant's mother in a common-law relationship between 1960 and 1973. Mr. [REDACTED] states that he and the applicant's mother never discussed whether she had been married to the applicant's father, although she did inform him that she was not married at the time they began living together. Mr. [REDACTED] also asserts that Ms. [REDACTED] was illiterate and could only sign her name.
- A January 30, 2006 affidavit sworn by [REDACTED] the elder sister of [REDACTED]. She states that her sister was never married ceremonially to [REDACTED] although she lived with him for a period of time on a ranch near Rio Bravo. She also indicates that she believes that Ms. [REDACTED] never learned to read or write.
- The documented negative outcomes of searches for a marriage certificate for [REDACTED] and [REDACTED] in the marriage records of Rio Bravo, Reynosa, [REDACTED] and [REDACTED] State of Tamaulipas

Counsel's reasoning is not, however, persuasive. The information provided by the August 2, 1978 note, which indicates that [REDACTED] marriage certificate was lost and that she was divorced from [REDACTED] in December 2, 1958, is not overcome by the affidavits submitted by [REDACTED] and [REDACTED] regarding Ms. [REDACTED] literacy. The AAO finds the initial wording of the letter, which begins "On my father['s] and mother['s] marriage certificate, there is no way I can get one. Both of my parents [are] dead." to indicate that it was the applicant who wrote on behalf of her illiterate mother, rather than the local "notaria" suggested by counsel in his letter of October 15, 1993. Accordingly, the August 2, 1978 letter appears to be further testimony from Ms. [REDACTED] submitted by the applicant on her mother's behalf, regarding the legal nature of Ms. [REDACTED] marriage, which she indicates ended in divorce on December 2, 1958.

The affidavit sworn by [REDACTED] indicates that he does not know whether Ms. [REDACTED] was previously married, as it was not a subject they ever discussed. [REDACTED] states that her younger sister was never married "ceremonially" to Eufemio Alvarez but only lived with him for a period of time on a ranch near Rio Bravo, Tamaulipas. Her affidavit does not however, establish the basis for her knowledge of her sister's marital status. Ms. [REDACTED] does not indicate that her knowledge is based on information provided by [REDACTED]. Neither does she report that her statements

are based on personal observation. When relying on affidavits as evidence, the regulation at 8 C.F.R. § 103.2(b)(2)(i) requires that an affiant have “direct personal knowledge of the event and circumstances.” As Ms. [REDACTED] states that she returned to the United States from Mexico at 15 years of age in 1936 and the applicant has indicated her mother did not return to the United States until 1959, the record does not establish that Ms. [REDACTED] had direct personal knowledge of her sister’s life in Mexico. Accordingly, her affidavit is insufficient to overcome the evidence presented by the applicant to prove that her parents were married at the time of her birth.

The birth certificates documenting the birth of two of the applicant’s half siblings do not, as counsel asserts, establish [REDACTED] marriage to [REDACTED], at the time the applicant was born. While both certificates report the natural parents of each child as being [REDACTED], they offer no indication that either child was born of a legal union. The birth record for [REDACTED] born on January 25, 1950, describes him as the legitimate nephew of [REDACTED] not the legitimate son of [REDACTED]. The 1956 birth record for [REDACTED] includes no reference to the nature of her birth. Therefore, neither record is proof that [REDACTED] was [REDACTED] “girlfriend,” rather than his wife, when the applicant was born, as counsel contends.

The failure of local authorities to locate a 1953 marriage record for the applicant’s parents in the cities of Rio Bravo, [REDACTED] and [REDACTED] State of Tamaulipas also fails to demonstrate that their marriage did not occur. The absence of such evidence is not persuasive in light of the contemporaneous birth record initially submitted by the applicant to establish that she was born to a married couple.

Accordingly, the AAO, like the director, concludes that the evidence initially accepted as demonstrating the marriage of the applicant’s parents has not been overcome on appeal. The applicant is established as a legitimate child born to parents, one of whom was a citizen of the United States and the other a citizen of Mexico.

“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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in Mexico on April 29, 1958. 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 1958.

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.

As the record contains a copy of [REDACTED] California birth certificate establishing her as a U.S. citizen, the only remaining issue before the AAO is whether, prior to the applicant’s birth, Ms. [REDACTED] was physically present in the United States for periods totaling ten years, five of which followed her 14<sup>th</sup> birthday.

In filing the first Form N-600, the applicant indicated that her mother had lived in the United States from 1929 until 1931; in the second N-600, she stated that Ms. [REDACTED] had lived in the United States from her birth until 1933. In support of these statements, the record offers copies of Ms. [REDACTED] California birth and baptismal certificates, which place her in the United States between September 27 and October 14, 1928; birth certificates for two of Ms. [REDACTED] siblings, born in 1921 and 1931; and the previously-discussed affidavit sworn by her older sister, [REDACTED] Ms. [REDACTED] attests that her family lived in California until 1930 or 1931 when an injury suffered by her father resulted in their return to Mexico, a statement supported by the birth certificate for her sister, [REDACTED] which establishes that [REDACTED] was born on January 17, 1931 in Coachella, California. Based on this evidence, the AAO finds the record to offer sufficient proof to establish that the applicant's mother, following her birth on September 27, 1928, lived in the United States until her sister [REDACTED] birth in January 17, 1931, i.e., for a period of 15-16 months. The Form N-600s submitted by the applicant indicate that after her family's return to Mexico, Ms. [REDACTED] did not return to the United States until 1958/59. As a result, the record does not demonstrate that prior to the applicant's birth, her mother was physically present in the United States for the ten years required to satisfy section 301(a)(7) of the Act. Therefore, the director's decision will be affirmed.

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 director's decision is affirmed. The application is denied.