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



U.S. Citizenship  
and Immigration  
Services

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*Ea*



FILE:



Office: HOUSTON

Date: MAR 02 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 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.

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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on January 23, 1965 in Mexico. The applicant's mother, [REDACTED] was born in Texas on February 13, 1941, and she is a United States citizen. The applicant does not assert, and the record does not reflect, that his father was a U.S. citizen. The applicant indicated that his parents were married at the time of his birth. 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), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found that, based on the evidence in the record, the applicant failed to establish that his mother resided in the United States for ten years prior to the applicant's birth, at least five of which occurred after her fourteenth birthday. The application was denied accordingly.

On appeal, counsel for the applicant states that the record contains sufficient evidence to show that the applicant's mother met the residency requirement of section 301(g) of the Act. *Brief from Counsel*, submitted July 8, 2005. Counsel further asserts that the decision of the district director contains false statements that are inconsistent with the evidence of record, and it fails to reference key documents provided by the applicant. *Id.*

The record contains a brief from counsel; an affidavit from the applicant's mother; a copy of the marriage certificate for the applicant's maternal great grandparents; a copy of the applicant's maternal grandmother's birth certificate; a copy of the applicant's mother's birth certificate; a copy of the applicant's mother's baptismal certificate; a statement from [REDACTED] who has served on the Hart School Board of Education and as Mayor of the City of Hart, Texas, verifying the applicant's mother's attendance in the Hart Independent School System; copies of class photos from the applicant's mother's school; a letter verifying that school records for the applicant's mother were destroyed in a fire; copies of the applicant's siblings birth certificates; a copy of the applicant's parent's marriage certificate; a copy of the applicant's father's application for a Mexican passport to travel to the United States; copies of a business card and social security card for the applicant's father; copies of correspondence mailed to the applicant's mother in Corpus Christi, Texas; a letter from a friend of the applicant's family; a copy of the applicant's birth certificate, and; copies of the birth certificates of the applicant's mother's siblings. The entire record was reviewed and considered in rendering this decision.

"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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in Mexico in 1965. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.<sup>1</sup>

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.

Upon review, the applicant has submitted sufficient evidence to establish that his mother 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 she attained the age of fourteen years. Section 307(a)(7) of the former Act.

The applicant's mother's birth certificate reflects that she was born in Texas on February 13, 1941. The certificate was issued on November 30, 2001, and it bears the seal of the County Clerk of the County of Hidalgo, Texas. The record contains a notation that a Citizenship and Immigration Services (CIS) Officer contacted [REDACTED] at the [REDACTED] of Vital Statistics, who verified that the birth certificate is true and correct. The district director stated that the applicant's mother and one witness attested to the information in the certificate, and the record contains no accompanying primary evidence to prove that the applicant's mother was born a United States citizen. However, particularly due to the fact that the [REDACTED] Bureau of Vital Statistics found a sufficient basis to issue the birth certificate, and the record contains no clear evidence to contradict that the applicant's mother was born in the United States, the AAO finds no cause to question whether the applicant's mother is a United States citizen by birth within the country.

The applicant submitted a baptismal certificate for his mother that reflects that she was baptized in Edinburg, Texas on March 11, 1945. The certificate indicates the name of the individual baptized as "[REDACTED]" with birth date of February 13, 1941 and parents "[REDACTED]s" and "[REDACTED]". The AAO finds it reasonable that the document references the applicant's mother, and that her first name is misspelled as "[REDACTED]" instead of "[REDACTED]" as all other identifying information is congruent with other documents in the file, including a consistent birth date and an accurate account of her parents' names. The document was issued on June 12, 2002. However, it states that the information is presented "as appears in the Baptismal Register of [the] Church." The records contains no inconsistent evidence that questions whether the baptismal certificate is accurate.

The applicant's mother stated that she began school in 1946 at the Hart Independent Schools in Hart, Texas. Her statement is corroborated by an affidavit from [REDACTED], who has served on the Hart School Board of Education and as Mayor of the City of Hart, Texas.

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<sup>1</sup> It is noted that both the district director and counsel indicated that the applicant must meet the requirements of section 301(g) of the Act. However, section 301(a)(7) of the former Act was in effect at the time of the applicant's birth, thus he must meet the requirements in that section.

The applicant's mother provided that she moved with her family to Michigan in 1947, where one of her sisters was born. This statement is supported by a copy of the birth certificate of [REDACTED] that reflects that the applicant's mother gave birth to her in Michigan on June 26, 1947.

The applicant's mother provided that she moved with her family to Illinois in 1948, where another of her sisters was born. This statement is supported by a copy of the birth certificate of [REDACTED] that reflects that the applicant's mother gave birth to her in Illinois on August 31, 1948.

The applicant's mother provided that she again attended classes at the Hart Independent Schools in Hart, Texas from 1956 to 1958. This statement is supported by the affidavit from [REDACTED]. As further corroborating evidence, the records contain copies of class photos for the Hart School in Hart, Texas for the years 1954, 1955, 1956, and 1957, in which the applicant's mother is depicted as a member of the student body in each year. It is noted that the applicant's mother's name is presented as "[REDACTED]". The applicant's mother's two younger sisters share the same mother as the applicant's mother, yet their birth certificates reflect that their father was [REDACTED]. The AAO finds it reasonable that the applicant's mother would also use the last name [REDACTED] in keeping with the rest of her immediate family members. Thus, the AAO finds that the class photos serve as sufficient evidence of the applicant's mother's presence in the United States during the covered school years.

The applicant's parents were married in Mexico on February 19, 1960. Thus, the applicant's mother departed the United States at some point between the conclusion of her attendance at Hart School and February 1960. It is noted that the district director stated that the applicant's parents' marriage certificate "clearly indicates that both of [the applicant's] parents are citizens of Mexico." However, as correctly observed by counsel, the marriage certificate provides that the applicant's mother is "North American by birth, Originated of Santa Anita, Texas, resident of Weslaco, Texas and in transit of this city, with temporary domicile in house No. [REDACTED] South of the [REDACTED]". Thus, the marriage certificate reflects that the applicant's mother was a citizen and resident of the United States at the time of her marriage, and she was present in Mexico temporarily.

The record suggests that the applicant's mother returned to the United States at least as early as August 23, 1961, as the applicant's father was admitted to the United States in B status on that date "to visit [illegible] wife." See *Handwritten Note on Applicant's Father's B-2 Nonimmigrant Visa*, referencing an entry stamp of August 23, 1961. The applicant's father's B-2 visa contains handwritten notations, ostensibly from inspecting officers upon his admission, one of which indicates that his "Wife U.S.C. lives in Weslaco, Texas." *Id.* The father's visa was further stamped for entries in December 1961 and on February 18, 1962. The applicant's father filed an application for a Mexican passport in 1962 in which he stated that the applicant's mother was born in Texas, and he intended to travel to Weslaco, Texas. The applicant's father left blank the space where one would specify the name of an accompanying spouse. Thus, the application suggests that the applicant's mother was already in Texas, and the applicant's father intended to join her.

The applicant's mother stated that she and the applicant's father resided in San Antonio, Texas in 1963 at the time that the applicant's father obtained a social security card. A copy of the social security card is included in the file, yet it does not contain notations of the date or place of issuance. The applicant's mother stated that she and the applicant's father moved to Corpus Christi, Texas in 1963. As evidence of this fact, the applicant submitted a copy of his father's business card for Monterrey Studios in Corpus Christi, Texas. However, this card does not indicate the date that it was created or the date that the business began. The applicant submitted a letter from his father's business associate, [REDACTED] in which Mr. [REDACTED] stated that he has

know the applicant's parents since 1964, and he operated a business with the applicant's father named

The applicant's mother stated that her first son was born in Corpus Christi, Texas in 1964. The record contains a birth certificate for the applicant's brother, , that reflects that he was born in Nueces County, Texas on January 21, 1964.

The applicant's mother provided that the applicant was born in Mexico on January 23, 1965 when she was visiting relatives. The applicant's birth certificate shows that he was born on January 23, 1965 in Montemorelos, Mexico. Thus, it is evident that the applicant's mother traveled to Mexico at some point between the birth of her first son on January 21, 1964, and the birth of the applicant on January 23, 1965.

In summary, the above-discussed documentation and statements establish that the applicant's mother was born in the United States on February 13, 1941. The record shows by a preponderance that she was present in the United States until her baptism on March 11, 1945, and afterwards until the end of 1948, at such time that her family resided in Illinois when her youngest sister was born, a period totaling approximately seven years and six months. The evidence shows that the applicant's mother was then present in the United States during four school years in Hart, Texas from 1954 to 1957, a period totaling approximately three years and nine months. She reached age 14 on February 13, 1955, thus she accrued approximately two years and three months of presence after age 14 during this period.

The applicant's mother spent time in Mexico around the time of her marriage in February 1960. However, the record supports that she returned to the United States at least by August 23, 1961, when the applicant's father was admitted to the country to visit her. The record supports that the applicant's mother continued to reside in the United States until the birth of her first child on January 21, 1964. This period of residence totals approximately two years and five months. As the applicant was born in Mexico, it is evident that his mother left the United States sometime after January 21, 1964. Yet, it is reasonable to assume that she remained in the United States for at least several months after the birth of her first child, particularly in light of her long and continued residence in the United States. The preponderance of the evidence show that the applicant's mother was present in the United States for at least two years and nine months during this period, all of such time was after she reached 14 years of age.

In summary, the applicant has submitted testimony and evidence to show that his mother resided in the United States for at least 14 years prior to his birth, at least five years of which were after his mother reached 14 years of age. Thus, the applicant has shown that his mother satisfied the residency requirement of section 307(a)(7) of the former Act. Based on the foregoing, the applicant has shown that he derived citizenship from his mother, and he is eligible for a certificate of citizenship.

The regulation at 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. The AAO finds that the applicant has established by a preponderance of the evidence that he satisfies the requirements of section 307(a)(7) of the former Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.