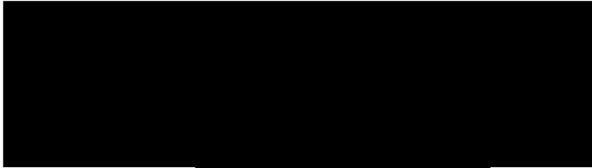


**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



**U.S. Citizenship  
and Immigration  
Services**



12

FILE:



Office: HARLINGEN, TEXAS

Date:

MAY 29 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under sections 301(g) and 320 of the  
Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1431.

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 in Mexico on July 12, 2001. The applicant's mother, [REDACTED] was born in Texas on September 19, 1967, and she is a U.S. citizen. The applicant does not assert, and the record does not reflect, that her father, [REDACTED] is a U.S. citizen. The applicant's parents married in Texas on June 30, 1998. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that she derived U.S. citizenship from her mother.

The district director concluded that the applicant failed to establish that her U.S. citizen mother was physically present in the U.S. for the requisite time period set forth under the Act. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant has established that she meets the requirements for a certificate of citizenship. *Brief from Counsel*, dated July 24, 2006. Counsel contends that the district director prevented the applicant from presenting witnesses at an interview in connection with the present application, and thus the applicant's due process rights were violated. *Id.* at 6.

The record contains a brief from counsel; copies of the applicant's mother's birth certificate and baptismal certificates; copies of documents in connection with the applicant's mother's employment in the United States; a copy of the applicant's mother's high school equivalency certificate; copies of documents in connection with the applicant's mother's attendance of classes in the United States; a copy of the applicant's parents' marriage certificate, and; a copy of the applicant's birth certificate. The entire record was considered in rendering this decision.

"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 was born in Mexico in 2001. In order to establish that she derived U.S. citizenship at birth, the applicant must establish that her mother satisfies the requirements set forth in section 301(g) of the Act, as in effect at the time of her birth.<sup>1</sup>

Section 301(g) of the Act, 8 U.S.C. § 1401, states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) 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

---

<sup>1</sup> It is noted that the district director indicated that section 301(a)(7) of the former Act controls the present Form N-600 application. However, for those born on or after November 14, 1986, section 301(g) of the Act dictates the requirements to derive citizenship at birth from a U.S. citizen parent when the applicant was born outside the United States. It is further noted that the district director issued correspondence to the applicant requesting additional evidence regarding her mother's presence in the United States, in which the district director referenced the residency standard found in section 301(g) of the Act. Thus, the applicant was not prejudiced by the district director's reference to section 301(a)(7) of the former Act.

outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years . . . .

In order to meet the physical presence requirements as set forth in section 301(g) of the Act, the applicant must establish that her mother was physically present in the United States for five years between September 19, 1967 and July 12, 2001, and that two of those years occurred after September 19, 1971, when her mother reached fourteen years of age.

As evidence of her mother's presence in the United States, the applicant provided a copy of her mother's birth certificate that shows that her mother was born in Edinburg, Texas on September 19, 1967. The applicant submitted a copy of her mother's baptismal certificate that reflects that her mother was baptized in Texas on December 3, 1967. Together, these documents support that the applicant's mother was present in the United States for approximately three months from the time of her birth.

The applicant provided a copy of her aunt's birth certificate that reflects that her grandmother gave birth to her aunt in Texas on July 28, 1970. However, the certificate does not reflect that the applicant's mother or grandfather were in the United States at the time of the birth of her aunt. The applicant has not submitted a statement from her mother, or an explanation of where her mother was at the time of her aunt's birth. The applicant stated on Form N-600 that her mother was in the United States from 1967 to 1971, but this brief indication is not deemed sufficient to account for her mother's location during the referenced period. Accordingly, the applicant has not shown by a preponderance of the evidence that her mother was in the United States at the time of the birth of the applicant's aunt.

The applicant provided a copy of her mother's high school equivalency certificate that was issued in Texas on June 12, 1987. The applicant further provided documentation in connection with her mother's employment, including IRS Forms W-4 and employment records from her mother's employer that reflect that the applicant's mother was employed in Texas from June 5, 1987 to March 29, 1988. These documents reflect that the applicant's mother was present in the United States for a period of approximately ten months.

The applicant provided copies of documents that reflect that her mother attended classes at the University of Texas – Pan American from April 1991 to June 1991, and from August 1991 to December 1991. This documentation suggests that the applicant's mother was in the United States for a period of approximately eight months.

The applicant provided a copy of her parents' marriage certificate that shows that her mother was married in Texas on June 29, 1998. Thus, it can reasonably be inferred that the applicant's mother was present in the United States for several weeks around this event. As the applicant was born in Mexico on July 21, 2001, it is evident that her mother departed the United States at some point after June 29, 1998. On Form N-600 the applicant indicated that her mother was present in the United States from 1985 until the present, thus the applicant has not explained when and why her mother traveled to Mexico prior the applicant's birth, and the record is not clear regarding whether the applicant's mother in fact resided in Mexico or the United States at the time the applicant was born.

In summary, the applicant has submitted documentary evidence that supports that, prior to the applicant's birth, her mother was present in the United States for approximately three months from the time of her birth, from approximately from June 5, 1987 to March 29, 1988, from approximately April to December 1991, and

for at least a matter of weeks around June 29, 1998. These periods total approximately one year and ten months. The record does not contain a statement from the applicant's mother or other witnesses, or explanation from the applicant or counsel, to indicate whether the applicant's mother was present in the United States between any of the periods covered by the above-discussed documentation. Thus, the applicant has not provided sufficient evidence to allow the AAO to reasonably infer that the applicant's mother was present in the United States during the periods between those directly referenced by the above-discussed documents. Accordingly, the applicant has not shown by a preponderance of the evidence that her mother was present in the United States for five years between September 19, 1967 and July 21, 2001, and that two of those years occurred after September 19, 1971, when her mother reached fourteen years of age, as required by section 301(g) of the Act. For this reason, the application may not be approved.

Counsel notes that the applicant appeared for an interview in connection with the present matter on April 18, 2006. *Brief from Counsel* at 2. Counsel states that the applicant's mother and other witnesses were presented to the Harlingen District Office as available for testimony. *Id.* Counsel provides that the adjudicating officer heard testimony from the applicant's mother regarding her presence in the United States. *Id.* Yet, counsel explains that, while the adjudicating officer made note of the presence and availability of the other witnesses, no testimony was taken from them. *Id.*

Counsel states that the district director denied the application on the basis that the applicant failed to submit sufficient evidence of her mother's presence in the United States. *Id.* at 2-3. Counsel recognizes that Citizenship and Immigration (CIS) officers have the discretion to decline to hear testimony from a witness when he or she determines that such testimony would add no material benefit to the claim. *Id.* at 3; 8 C.F.R. § 341.2(b). However, counsel asserts that a CIS officer may not "deter or prevent counsel from calling a witness to testify at an N-600 interview." *Id.* Counsel states that "if counsel informs the adjudicator that a witness is available and counsel believes the witness can shed some light on the underlying application, the examiner violates due process by refusing to listen to a witness counsel wants to call." *Id.* at 6.

Counsel has not established that the district director erred in declining to hear testimony from witnesses in addition to the applicant's mother. In fact, counsel has not identified the witnesses allegedly made available for testimony at the April 18, 2006 interview. Nor has counsel indicated what facts the witnesses would have provided that would have supported the applicant's mother's presence in the United States. It is further noted that the applicant has not submitted statements from the alleged witnesses on appeal that could have supplemented the record with their observations in lieu of oral testimony.

Further, while counsel states that the additional witnesses were made available for the April 18, 2006 interview, counsel has not asserted that he requested that the witnesses be heard. Alerting the adjudicating officer that witnesses are available if desired by the adjudicating officer is not deemed an affirmative request from counsel that the witnesses be heard. Thus, if the adjudicating officer was merely made aware of the fact that additional witnesses were available, without a clear request from counsel that they be heard, the adjudicating officer's decision not to hear the witnesses does not constitute "deter[ing] or prevent[ing] counsel from calling a witness to testify." *Brief from Counsel* at 3. The record does not reflect that the adjudicating officer refused to hear testimony or accept evidence offered by counsel.

The applicant has not shown that she was prejudiced by the actions of the adjudicating officer during her interview, or that she has been prevented from fully presenting her case.

Based on the foregoing, the applicant has not shown that she meets the requirements of section 301(g) of the Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met her burden in the present matter. The appeal will therefore be dismissed.<sup>2</sup>

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> It is noted that the present application fails for a lack of evidence. The record does not affirmatively indicate that the applicant is ineligible for a certificate of citizenship. The dismissal of this appeal is without prejudice to the applicant, and she may file a new Form N-600 with additional evidence if she feels she may meet the requirements of section 301(g) of the Act.