



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TX

Date:

SEP 18 2007

IN RE:

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

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. A motion to reopen and reconsider the application was dismissed and the application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on September 26, 1925 in Mexico. The applicant's parents, as reflected in her birth certificate, are [REDACTED]. The applicant's mother, now deceased, was born on March 3, 1901 in Texas. There is no information in the record regarding the applicant's father's nationality.

The district director denied the applicant's claim to citizenship finding that she had failed to establish that her mother was born in the United States. The district director subsequently dismissed the applicant's motion to reopen finding that the new evidence submitted did not establish her mother's birth in the United States.

On appeal, the applicant, through counsel, submits a brief contending that the district director violated the regulations by insisting on a birth certificate as the only proof of the applicant's mother's birth in the United States. The applicant further maintains that the preponderance of the evidence submitted establishes her mother's birthplace was in the United States.

"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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on September 26, 1925. Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 is therefore applicable in this case.

R.S. section 1993 provides that a child:

[B]orn 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, is declared to be 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.

The instructions accompanying the Form N-600, under the heading, *WHAT DOCUMENTS OR EVIDENCE MUST I SEND WITH THE APPLICATION?*, require an applicant for a certificate of citizenship to submit, as proof of U.S. citizenship, "birth certificates showing birth in the United States; an N-550, Certificate of Naturalization; an N-560, Certificate of Citizenship; and FS-240, Report of Birth Abroad of United States Citizen; or a valid unexpired U.S. passport." When the above documents cannot be obtained, the Form N-600 instructions reflect the language at 8 C.F.R. § 103.2(b)(2)(ii):

If it is not possible to obtain any one of the above-required documents, you must establish why the evidence is not available [emphasis added]. You may be required to submit an original written statement from the relevant government or other authority explaining the reason for the unavailability of the document(s). You may submit . . . secondary evidence for consideration. However, secondary documents that do not overcome the unavailability of primary documents may result in denial of the application

Included within the list of documents identified by the Form N-600 instructions as constituting secondary evidence are baptismal certificates, church records, school records, census records and affidavits.

The applicant submits the following evidence as proof of her mother's birth in the United States:

1. Certificate of Baptism issued by Immaculate Conception Cathedral in Brownsville, Texas, indicating the applicant's mother was born on March 3, 1901 but not reflecting her place of birth.
2. 1910 census records indicating that a [REDACTED] born in 1900, resided with [REDACTED] and [REDACTED] in Brownsville.
3. Applicant's brothers' birth certificates, indicating applicant's mother was born in Salado, Texas.
4. Applicant's mother's death certificate, reflecting Salado, Texas as her place of birth.
5. Applicant's marriage certificate, reflecting her mother's residence in Salado, Texas.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states that the nonexistence of required evidence creates a presumption of ineligibility. The applicant, through counsel, explains that "it is not uncommon for people [born in 1901] not to have a birth certificate." See Applicant's Brief at 4. The AAO notes that the applicant does not explain what, if any, efforts she made to obtain her mother's birth certificate. Nevertheless, the AAO finds the applicant has overcome the regulatory presumption by submitting her mother's baptism certificate, census records, and other evidence. The AAO concludes that the applicant has established, by a preponderance of the evidence, that her mother was born in the United States and resided in the United States prior to her birth. Therefore, the applicant acquired U.S. citizenship at birth pursuant to section 1993 of the Revised Statutes.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.