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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] OFFICE: EL PASO, TX Date: AUG 20 2008

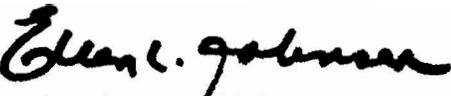
IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship 301(a)(7) of the former 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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, El Paso, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form N-600 will be approved.

The record reflects that the applicant was born in Mexico on March 5, 1983. The applicant's mother was born in Mexico, and she acquired U.S. citizenship at birth through her U.S. citizen mother. The applicant's father was born in Mexico and he is not a U.S. citizen. The record reflects that the applicant's parents were married at the time of her birth. The applicant presently seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)).

The district director concluded the applicant had failed to establish by a preponderance of the evidence that her mother was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after her mother reached the age of fourteen, as required by section 301(a)(7) of the former Act. The Form N-600 application was denied accordingly.

On appeal the applicant asserts, through counsel, that previously submitted affidavit evidence is authentic and acceptable and that the affidavit evidence, combined with sibling birth certificate evidence, establishes by a preponderance of the evidence that the applicant's mother was physically present in the United States for the required time period set forth in section 301(a)(7) of the former Act.

"[T]he 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 was born in Mexico in 1981. Section 301(a)(7) of the former Act therefore applies to her acquisition of U.S. citizenship at birth claim.

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.

In order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant in the present matter must establish that her mother was physically present in the U.S. for ten years between her birth on February 1, 1955, and the applicant's birth on March 5, 1983, and that five years of U.S. physical presence occurred after February 1, 1969, when the applicant's mother () turned fourteen.

The record contains the following evidence relating to the U.S. physical presence during the relevant time period:

An affidavit signed by Josefa Aragon, stating that is her sister and that Ms. lived with her in El Paso, Texas from summer 1975 to 1979. states that cared for her baby, and that did not work outside of her home because she could not do so legally. She states that had two children

while she lived with her in Texas, born in 1976 and 1977. states that [REDACTED] moved to Juarez, Mexico with the children and their father in 1979.

An affidavit signed by [REDACTED], stating that [REDACTED] lived with her in El Paso, Texas and helped clean and care for her children from summer 1969 to summer 1975. The affiant describes where and when she and [REDACTED] met, where they lived and when, and the nature of [REDACTED]'s work.

State of Texas birth certificates reflecting that [REDACTED] gave birth to two children in Texas, [REDACTED] born June 21, 1976, and [REDACTED], born May 13, 1977. [REDACTED]'s birth certificate reflects that the applicant's father's address was at [REDACTED] El Paso, Texas at the time of [REDACTED] birth. The birth certificate states that [REDACTED]'s address at the time of [REDACTED]'s birth was at [REDACTED], Chihuahua, Mexico. [REDACTED]'s birth certificate reflects that the applicant's father's address was at [REDACTED] San Isidro, Chih., Mexico at the time of [REDACTED]'s birth. [REDACTED]'s address is listed as [REDACTED], Chihuahua, Mexico.

Hospital records reflecting that [REDACTED] received pregnancy related medical services in El Paso, Texas on the following dates: 2/5/76; 5/26/76; 6/2/76; 1/14/77; 2/18/77; and 3/18/77.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. "[W]hen something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true." *Matter of E-M*, 20 I&N Dec. 77, 80 (BIA 1989.)

The AAO finds, upon review of the evidence, that the applicant has established by a preponderance of the evidence, that her mother was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] turned fourteen.

The evidence that [REDACTED] went to doctor appointments and gave birth to two of her children in El Paso, Texas, establishes that [REDACTED] was physically present in the United States during those times. The AAO finds further that the information contained on the U.S. birth certificates stating that [REDACTED] resided in Mexico at the time, is overcome by detailed information contained in the affidavits submitted on appeal, and the reasonableness of assertions made on appeal that a pregnant woman is unlikely to illegally cross a river into the United States on numerous occasions in order to go to prenatal doctor appointments and to give birth to two of her four children in a U.S. hospital. The AAO additionally finds that the affidavit information contained in the record is reasonable and contains material details relating to the source of knowledge of the affiants, as well as the dates, addresses, and nature of employment that [REDACTED] engaged in while in the United States.

Accordingly, the AAO finds that the totality of the evidence contained in the record establishes, by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] turned fourteen. The appeal will therefore be sustained, and the Form N-600 will be approved.

ORDER: The appeal is sustained and the application is approved.