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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: EL PASO, TEXAS Date: MAR 15 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301of the Immigration and Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on December 21, 1956, in Chihuahua, Mexico. The applicant's mother, was born in New Mexico on October 29, 1917, and she was a United States (U.S.) citizen. The record reflects that Ms. in New Mexico on August 12, 2000. The applicant's father, was born in Mexico, and is not a U.S. citizen. The applicant's parents were married on November 20, 1936, in Chihuahua, Mexico. 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 acquired U.S. citizenship at birth through her mother.

The interim district director found the applicant had failed to establish that her mother was physically present in the United States or its outlying possessions for a period totaling ten years, at least five years of which occurred after Ms. eached the age of fourteen. The application was denied accordingly.

On appeal, the applicant asserts that her application was unfairly denied and that her mother resided in the United States for the requisite time period.

"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 (9th Cir., 2000) (citations omitted). The applicant in this case was born in Mexico in 1956. The version of Section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls her claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See section 301(a)(7) of the former Act.* The applicant must therefore establish that her mother was physically present in the U.S. for a period totaling ten years between October 29, 1917, and December 21, 1956, and that five of those years were after October 29, 1931, when her mother turned 14.

The evidence pertaining to Ms. physical presence prior to December 21, 1956, consists of the following documents:

> Birth certificate and birth registration information indicating that Ms. was born in Santa Rita, Grant County, New Mexico on October 29, 1917;
>
> A marriage certificate issued in Janos, Chihuahua, Mexico, indicating that Ms. married her husband in Mexico on November 30, 1936, and that she resided in Mexico at that time;
>
> A letter signed by stating that Ms. was born in New Mexico on October 29, 1917. The letter states further that Ms. returned to Mexico to live with her grandparents after her mother died, and that many years later, Ms. me back to the United States before returning to Mexico again to get married.

The AAO notes that the above evidence fails to establish that Ms was in the United States after October of 1917. The 1936 marriage certificate reflects that Ms lived in Mexico at that time. Moreover, the letter submitted by the applicant lacks probative value because it does not describe who

is, or the source of his knowledge about Ms Furthermore, the letter is vague and contains no detailed information pertaining to where Ms. resided in the U.S. or on what dates she resided in the United States, and the letter does not contain or refer to any corroborating information to substantiate its claims.

The remainder of the evidence submitted by the applicant (rental receipts, utility bills, tax and government benefits information, medical receipts, and a letter from the applicant's brother pertains to Ms. presence in the United States after December 21, 1956. This evidence is therefore not relevant towards establishing Ms ection 301(a)(7) physical presence requirements. Accordingly, the AAO finds that the applicant has failed to establish that she is entitled to derivative U.S. citizenship pursuant to section 301(a)(7) of the former Act.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.