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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]

FILE: [redacted] Office: SAN FRANCISCO (FRESNO), CA Date: JAN 12 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, 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 6, 1951. The applicant presented evidence that her mother, was born in Brawley, California on March 10, 1925, and is a United States (U.S.) citizen. The applicant's father, was born in Mexico, and he was not a U.S. citizen. The applicant's parents were married on April 5, 1948, in Mexico. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g), based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director determined that the applicant had failed to establish her mother (Ms. was physically present in the United States for the requisite time period set forth under the Immigration and Nationality Act. The application was denied accordingly.

On appeal, counsel asserts that the evidence presented by the applicant reasonably establishes that Ms. ived in the United States for at least five years after her sixteenth birthday.

"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 was born on July 6, 1951. Section 201(g) of the Nationality Act of 1940 (the Nationality Act) is therefore applicable to her derivative citizenship claim.

Section 201(g) of the Nationality Act states in pertinent part that:

> A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided,* That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further,* That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

In the present case, the applicant must establish that her mother was physically present in the U.S. for ten years between March 10, 1925 and July 6, 1951, and that five of those years occurred after March 10, 1941, when Ms turned sixteen.

The evidence relating to Ms. physical presence in the United States during the requisite time period consists of the following:

> A delayed issued California birth certificate and a U.S. passport reflecting that Ms. was born in California on March 10, 1925.

A baptismal certificate indicating that Ms. was baptized at the St. Patrick's Church in Calipatria, California on July 25, 1925.

School attendance records reflecting that Ms. attended Westmorland Elementary School in Westmorland, California for three years between 1934 and 1937.

An affidavit dated October 28, 2002, written by a family friend, stating that Ms. visited often with her family in California from the time of her birth in 1925 until 1936.

The AAO finds that the birth and baptismal certificates submitted by the applicant establish by a preponderance of the evidence that Ms. was physically present in the United States in 1925. The AAO additionally finds that the school record evidence contained in the record establishes by a preponderance of the evidence that Ms. was physically present in the U.S. for three years in 1934, 1935 and 1936. The AAO finds, however, that the affidavit written by acks probative value, as it is unsupported by any corroborative evidence and lacks material information and details regarding specific dates of residence or addresses of places that Ms. esided in the United States.

Accordingly, the AAO finds that the applicant has failed to establish that her mother resided in the United States for ten years, at least five of which were after the age of sixteen years old, as required by section 201(g) of the Nationality 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. The applicant has failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.