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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON (AUSTIN) TX Date: JAN 12 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(c) of the Immigration and Nationality Act; 8 U.S.C. § 1401(c) and 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Houston, 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 on June 26, 1976, in Mexico. The applicant's mother, was born in San Antonio, Texas, and she is a United States (U.S.) citizen. The applicant's father, was born in Mexico on January 26, 1950, and he derived U.S. citizenship at birth through a parent. The applicant's parents married on December 28, 1970, in Texas. The applicant seeks a certificate of citizenship pursuant to section 301(c) of the Immigration and Nationality Act, (the Act); 8 U.S.C. § 1401(c), based on the claim that she acquired U.S. citizenship at birth through her parents. In the alternative, the applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7) (former Act, now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)), based on the claim that she derived U.S. citizenship at birth through her U.S. citizen mother.

The interim district director (IDD) determined that the applicant's father had failed to comply with the U.S. residence requirements set forth in section 201(g) of the Nationality Act of 1940, as amended, and that her father therefore lost his U.S. citizen status when he turned twenty-six years old, prior to the applicant's birth. The IDD determined further that the applicant had failed to establish that her mother met the physical presence requirements set forth in section 301(a)(7) of the former Act. The IDD concluded that the applicant had therefore failed to establish that she derived U.S. citizenship at birth, and the application was denied accordingly.

On appeal the applicant concedes that her father did not reside in the United States prior to her birth or prior to his twenty-sixth birthday. The applicant asserts, however, that pursuant to provisions contained in the Act of October 27, 1972, Pub. L. 92-582, 86 Stat. 1289 (1972 Act), her father did not lose his U.S. citizenship until he turned twenty-eight years old on January 26, 1978. The applicant asserts that her father was therefore a U.S. citizen at the time of her birth in June of 1976, and that accordingly, she derived U.S. citizenship at birth through her U.S. citizen mother and father under section 301(c) of the Act.

The record reflects that the applicant was born on June 26, 1976. If the applicant establishes that both of her parents were U.S. citizens at the time of her birth, section 301(c) of the Act will apply to her derivative citizenship claim.

Section 301(c) of the former Act provided, in pertinent part, that that a child is a citizen of the United States at birth, if the child is :

> [A] person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person.

The present record reflects that the applicant's father (Mr. was born in Mexico on January 26, 1950, and that he derived U.S. citizenship at birth under section 201(g) of the Nationality Act of 1940.

Section 201(g) of the Nationality Act of 1940 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.

The AAO notes that retroactive amendments made by the former Act and by the Act of October 27, 1972, modified U.S. residence requirements for children born abroad to U.S. citizens, by allowing the person to retain citizenship status if she or he was continuously present in the U.S. for a period of two years between the ages of fourteen and twenty-eight.

The applicant asserts on appeal that although her father ultimately did not meet the U.S. residence requirements, as set forth in the amended section 201(g) of the Nationality Act of 1940, her father nevertheless retained his U.S. citizenship status through January of 1978, when he turned twenty-eight.

The AAO finds the applicant's assertion to be unconvincing. In *Matter of V-V-,* 7 I&N Dec. 122 (BIA 1956), (BIA 1956), the Board of Immigration Appeals (Board) addressed the present issue and determined that a person's derivative U.S. citizenship status continued only while there was a possibility of full compliance with subsequent U.S. residence requirements. *See also,* INS Interp. 301.1(b)(6) (discussing citizenship retention requirements). The U.S. Department of State provides a similar construction in Volume 7 of the Foreign Affairs Manual (7 FAM) 1133.5-8, which provides, in pertinent part, that:

> (c) [T]he Department holds that the retroactivity of the [1972] amendment extended also to persons who had failed to comply with any retention requirements and who, at the time of the amendment, were over age 26 and ineligible to comply with the new requirements. Such persons were previously held to have lost their citizenship at age 23, but now are held to have ceased to be U.S. citizens upon reaching age 26.

The AAO finds that in order to comply with the U.S. residence requirements set forth in section 201(g) of the Nationality Act of 1940, as amended in 1972, the applicant's father must have taken up residence in the United States by his twenty sixth birthday, on January 26, 1976. Because the applicant's father failed to do so, he automatically lost his U.S. citizenship status on January 26, 1976, five months prior to the applicant's birth. The applicant has therefore failed to establish that she is a derivative citizen under section 301(c) of the Act.

"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 June 26, 1976. Section

301(a)(7) of the former Act therefore applies to her claim for derivative citizenship through her U.S. citizen mother.

Section 301(a)(7) of the former Act provides that:

> [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 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.

The record contains the following evidence pertaining to the applicant's mother's (Ms. physical presence in the United States between June 12, 1951 and June 26, 1976:

> A birth certificate reflecting that Ms was born in San Antonio, Texas on June 12, 1951;
>
> School records reflecting that Ms attended school in the U.S. between 1958 and 1961, and between 1969 and 1970.
>
> A marriage certificate reflecting that Ms. married the applicant's father in Texas on December 28, 1970.
>
> An affidavit signed by Ms. on May 17, 2002, listing the amount of time that she spent in the U.S. and in Mexico between June of 1951 and December 1975.
>
> An affidavit signed by Ms. brother, n December 28, 2001, stating that the information in Ms. affidavit essentially corresponds to his own recollection of their family's physical presence in the United States.

The AAO finds that the birth certificate and school record evidence submitted by the applicant establishes that Ms. was physically present in the U.S. for approximately five years prior to the applicant's birth. The AAO finds, however, that the affidavits submitted by the applicant are uncorroborated by any evidence in the record and that they lack basic and material details pertaining to the dates of Ms physical presence, as well as regarding the addresses at which Ms. was physical present in the United States. The AAO therefore finds that the applicant has failed to establish her mother was physically present in the United States for the requisite time period set forth in 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 U.S. citizenship by a preponderance of the evidence. The applicant has not met her burden in the present case and the appeal will be dismissed.

ORDER: The appeal is dismissed.