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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: EL PASO, TEXAS Date: AUG 1 5 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to § 205 of the Nationality Act of 1940; 8 U.S.C. § 605.

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, El Paso, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on March 29, 1948. The applicant's mother was a U.S. citizen by birth, and her father was not a U.S. citizen. The applicant's parents never married. The district director denied the application based on the applicant's failure to establish that her U.S. citizen mother resided in the U.S. for at least ten years, including five years after she turned sixteen years old, as set forth in § 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g).

On appeal, counsel asserts that the district director incorrectly considered this application under § 201(g) of the Nationality Act, and that, since the applicant was never legitimated by a marriage between her parents, the applicant only need show that her mother resided in the United States prior to her birth. On appeal, counsel submits a certification of no marriage record in the Civil Registry of San Luis de Cordero, Durango, Mexico, and copies of documentation already on the record. The AAO has reviewed the entire record and concurs with counsel that the applicant has established eligibility for a certificate of citizenship.

"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 March 29, 1948; hence, the Nationality Act of 1940 is applicable to her derivative citizenship claim.

The district director considered the instant application pursuant to § 201(g) of the Nationality Act, which 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.

Section 205 of the Nationality Act states that:

> The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b) apply, as of the date of birth, to a child born out-of-wedlock, provided the paternity is established during minority, by legitmation, or adjudication of a competent court.
>
> In absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality if the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessons, shall be held to have acquired at birth her nationality status.

The record reflects that, although the applicant's father's name appears on her birth certificate, the applicant's parents were not married at the time of her birth or at any later date. On her Application for Citizenship, Form N-600, the applicant indicated that her parents were not married when she was born. Moreover, the applicant's mother stated in a sworn statement dated January 18, 1983, that the applicant's father was married to another woman at the time the applicant's mother began to live with him, and that he continued to be

married to the other person until the latter died in 1970. The applicant's mother stated further that she did not marry the applicant's father after his wife died, and that he died in 1975.

For the purposes of § 205 of the Nationality Act, legitimation is evaluated according to the laws of the father's domicile. The record reflects that during the applicant's childhood, her father may have had two different domiciles: one in Mexico, and, for five years, one in California. Pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D-,* 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez,* 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz,* 18 I&N Dec. 72 (BIA 1981). The applicant's parents were never married; the AAO thus finds that the applicant was not legitimated pursuant to Mexican law.

In the alternative, California Civil Code § 230 provides that a child born out of wedlock shall be deemed legitimate from the time of birth if the father publicly acknowledges the child as his own, receives the child into his family (with the consent of the wife if the father is married), and otherwise treats the child as if he or she were his legitimate child. The applicant's mother stated in her sworn statement that the applicant's father was married to another woman until her death, and there is no evidence on the record that the applicant's father's wife gave her consent to receiving the applicant into their family. There also is no evidence on the record of any court adjudication of the applicant's paternity. It does not appear that the applicant was legitimated pursuant to California law. The applicant's circumstances are therefore in accordance with those described in the second paragraph of § 205 of the Nationality Act.

Thus, the applicant must establish only that her mother resided in the U.S. prior to her birth. The record contains a copy of a 1920 immigration document indicating that the applicant's mother's parents moved to the United States in 1920. The record also contains the applicant's mother's birth certificate, establishing that she was born in California in 1924. In addition, there is a 1926 listing of household goods rendered at the Mexican consulate that appears to indicate that the applicant's mother's father was repatriating his household to Mexico. The AAO thus finds that the record establishes that the applicant's mother resided in the United States prior to the applicant's birth.

The applicant has established that her mother was a U.S. citizen at the time of her birth, that her mother had resided in the United States prior to her birth, and that the applicant was never legitimated nor was her paternity ever adjudicated by a court. The applicant has fulfilled the requirements for demonstrating her U.S. citizenship pursuant to § 205 of the Nationality Act. She therefore qualifies for a certificate of citizenship.

ORDER: The appeal is sustained.