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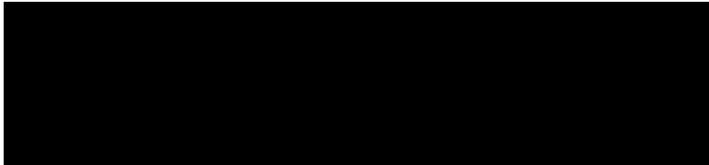
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, 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 August 10, 1969 in Mexico. The applicant's mother, [REDACTED] was born in California on April 15, 1945, and she is a United States citizen. The applicant does not assert, and the record does not support, that her father was a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director determined that, pursuant to section 322 of the Immigration and Nationality Act (the Act) and 8 C.F.R. § 322.2, the applicant was ineligible for a certificate of citizenship, as she reached eighteen years of age. Decision of the District Director, dated November 29, 2005.

On appeal, counsel for the applicant asserts that the district director applied an erroneous provision of law, as the present Form N-600 application should be adjudicated pursuant to section 301(a)(7) of the former Act. *Statement from Counsel on Form I-290B*, dated December 26, 2005. Counsel contends that the applicant is eligible for a certificate of citizenship under section 301(a)(7) of the former Act. *Id.*

The record contains a brief statement from counsel on Form I-290B; a statement from the applicant's mother; a copy of the applicant's mother's California driver's license and social security card; a copy of the applicant's mother's birth certificate; a copy of the applicant's mother's school records, and; a copy of the applicant's birth certificate. The entire record was considered in rendering this decision.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

"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 1969. Section 301(a)(7) of the former Act thus controls her claim to derivative citizenship.

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.

Upon review, counsel correctly asserts that the present application is subject to section 301(a)(7) of the former Act. The district director indicated that the applicant failed to satisfy section 322 of the Immigration and Nationality Act (the Act) and 8 C.F.R. § 322.2, yet these provisions are not relevant to the instant matter. Contrary to the district director's decision, the applicant does not have the burden to show that she was under

age eighteen at the time she filed her application or at the time a certificate of citizenship is issued. Accordingly, the district director's analysis will be withdrawn.

However, the applicant has not established that she meets the requirements of section 301(a)(7) of the former Act. Specifically, the record does not support that the applicant's mother was present in the United States for a period or periods totaling not less than ten years, at least five of which were after she reached her fourteenth birthday. Section 301(a)(7) of the former Act.

The applicant's mother stated that she resided in the United States until age fourteen. *Statement from Applicant's Mother*, dated November 1, 2004. She provided that she began to live with other people as a babysitter at the age of fourteen. *Id.* However, she did not specify where she lived with such people, thus the AAO cannot determine if she was residing outside the United States during this referenced period. The applicant's mother stated that she went back to Mexico, where she became pregnant and the applicant was born. *Id.* The applicant's mother did not indicate when she moved to Mexico. Thus, the applicant's mother's statement does not clearly reflect whether she was in the United States after age fourteen.

The applicant submitted school records for her mother for a school in California. Yet, the records cover the 1959-1960 academic year, during which the applicant's mother would have been approximately age fourteen or fifteen. Therefore, the records do not support that the applicant's mother was present in the United States for five years between her fourteenth birthday and the applicant's birth.

The record contains no further evidence that directly indicates where the applicant's mother has resided prior to the applicant's birth.

Based on the foregoing, the applicant has not submitted sufficient evidence to show that her mother met the residency requirements of section 301(a)(7) of the former Act. For this reason, the application may not be approved.¹

The regulation at 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. Based on the concerns noted above, the AAO finds that the applicant failed to establish by a preponderance of the evidence that she is eligible for a certificate of citizenship. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that this decision is without prejudice to the applicant, and the record does not affirmatively show that she is not eligible for a certificate of citizenship. The present application fails for a lack of evidence. The applicant may file a new Form N-600 application with additional evidence if she determines that she may meet the requirements of section 301(a)(7) of the former Act.