



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TX

Date: OCT 10 2006

IN RE:

Applicant:

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:

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant's mother, [REDACTED] was born in Snyder, Texas on December 14, 1931 and that the applicant was born in Mexico on November 17, 1952. The applicant's father was, at the time of the applicant's birth, a citizen of Mexico and remains a citizen of that country. The applicant's parents married on December 17, 1951. The applicant seeks a certificate of citizenship based on his birth to a U.S. citizen mother.

"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 in 1952, but prior to the effective date of the Immigration and Nationality Act of 1952. Accordingly, he must satisfy the requirements of section 201(g) of the Nationality Act of 1940 (1940 Act), the nationality law in place at the time of his birth.

Section 201(g) of the 1940 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.

Therefore, in the present matter, the applicant must establish that his mother resided in the United States for ten years between her birth on December 14, 1931 and the applicant's birth on November 17, 1952, and that five of these years occurred after December 14, 1947, when [REDACTED] would have turned sixteen.

In his denial, the district director noted that on the date the applicant was born, his mother was not yet 21 years of age. As a result, he found the applicant unable to establish that his mother, prior to his birth, had resided in the United States for five years after reaching the age of 16 years, as required by section 201 of the 1940 Act.

On appeal, counsel submits two affidavits in support of the applicant's assertion that his mother lived in the United States from the date of her birth until her marriage on December 17, 1951. Both affidavits attest to presence in the United States during the 1940s. They do not, however, overcome the basis for the director's denial, i.e., they do not overcome the fact that the applicant was born before his mother had lived in the United States for five years following her 16th birthday. As the evidence of record indicates that the applicant's mother did not meet the residency requirements of section 201(g) of the 1940 Act prior to the applicant's birth, the appeal will be dismissed.

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.