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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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ER

FILE:



Office: EL PASO, TEXAS

Date:

AUG 05 2005

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:

SELF-REPRESENTED

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 black ink, appearing to read "Robert P. Wiemann".

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 on August 19, 1983, in Mexico. The applicant's father [REDACTED] was born in Texas on December 22, 1949, and he is a U.S. citizen. The applicant's mother, [REDACTED] was born in Mexico, and she is not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, and section 301(a)(7) of the former Immigration and Nationality Act (former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Act; 8 U.S.C. § 1401(g)), based on the claim that she derived U.S. citizenship at birth through her father.

The district director found that the applicant met the out of wedlock requirements set forth in section 309(a) of the Act. The district director determined, however, that the applicant had failed to establish that her father was physically present in the U.S. for ten years prior to her birth, at least five years of which occurred after he turned fourteen, as set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant asserts that the evidence contained in the record establishes her father ([REDACTED]) was physically present in the U.S. for the required time period set forth in section 301(a)(7) of the former Act. To support her claim, the applicant submits [REDACTED] school and marriage records, as well as his criminal arrest records and the birth certificates of two of his children.

The AAO notes that because the applicant was born out of wedlock, derivative citizenship provisions set forth in section 309 of the Act apply to her case.

Section 309(a) of the Act states in pertinent part that:

The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

The record reflects that the applicant has lived in the United States since 1991, when she was approximately eight years old. The record contains a February 25, 2000, El Paso County 388th Judicial District Court Order of Parentage/Legitimation finding a parent-child relationship between the applicant and [REDACTED] for all purposes including legitimation, and ordering [REDACTED] to pay child support until the applicant reached the

age of eighteen. Based on the foregoing evidence, the AAO finds that the applicant has established she meets the requirements set forth in section 309(a) of the Act.

As discussed below, the AAO additionally finds that the applicant has established that the conditions set forth in section 301(a)(7) of the former Act, have been satisfied.

"[T]he 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 August 19, 1983. Section 301(a)(7) of the former Act (now known as section 301(g) of the Act) is therefore applicable to her derivative citizenship claim.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) 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 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 ten years, at least five of which were after attaining the age of fourteen years.

In the present matter, the applicant must establish that her father was physically present in the U.S for ten years between December 22, 1949 and August 19, 1983, and that at least five years of Mr. [REDACTED] physical presence occurred after December 22, 1963. The record contains the following evidence relating to Mr. [REDACTED] physical presence in the U.S. during the requisite time period:

A Texas Birth Certificate reflecting that [REDACTED] was born in El Paso, Texas on [REDACTED]

A First Communion Certificate reflecting that [REDACTED] was baptized in El Paso, Texas on February 12, 1950, and that he received his First Communion on April 5, 1959.

An El Paso Public School Cumulative Record Card reflecting that [REDACTED] attended Clardy Elementary School in El Paso, Texas during the school years of 1956, 1957, 1958, 1959, 1960 until 1961. The Record Card reflects that [REDACTED] attended Henderson School during the school years of 1961, 1962, 1963 until 1964, and that he attended Jefferson High School during the school year of 1965 until 1966.

A Texas Marriage Certificate reflecting that [REDACTED] resided in El Paso, Texas and was married on [REDACTED]

A California birth certificate reflecting that [REDACTED] child [REDACTED] was born in California on [REDACTED]

A California birth certificate reflecting that [REDACTED] child [REDACTED] was born in California on August 22, 1969.

An El Paso, Texas Police Letter reflecting that [REDACTED] was arrested in Texas on: February 20, 1972

October 9, 1975
July 2, 1977
March 26, 1978
April 30, 1979
July 12, 1981
July 16, 1982.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true.

The AAO finds that the cumulative evidence presented in the applicant's case establishes that [REDACTED] was probably physically present in the U.S. for a period of ten years between December 22, 1949 and August 19, 1983, and that five of those years occurred after December 22, 1963, when [REDACTED] turned fourteen. Accordingly, the AAO finds that the applicant has met her burden of establishing that she qualifies for U.S. citizenship under section 301(a)(7) of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.