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U.S. Citizenship  
and Immigration  
Services

*E2*



FILE:



Office: HARLINGEN, TX

Date: **DEC 19 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Harlingen, Texas. The matter is now before the AAO on appeal. The appeal will be sustained.

The Form N-600, Application for Certificate of Citizenship (N600 Application) reflects that the applicant was born on December 9, 1973. The N600 application reflects that the applicant's mother [REDACTED] was born in Texas on November 26, 1922, and that she was a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico, and he was not a U.S. citizen. The N600 application reflects that the applicant's parents married in Mexico on November 27, 1972. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), (now section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)), based on the claim that he derived U.S. citizenship at birth through his U.S. citizen mother.

The district director determined that the applicant had failed to establish [REDACTED] was his mother, or that [REDACTED] was physically present in the United States for ten years prior to the applicant's birth, at least five years of which were after she turned fourteen, as required by section 301(a)(7) of the former Act.

On appeal, the applicant indicates that additional information relating to his mother's physical presence in the United States establishes he is entitled to U.S. citizenship pursuant to section 301(a)(7) of the former 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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in Mexico in 1973. Section 301(a)(7) of the former Act therefore controls his 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.

The applicant must therefore establish that [REDACTED] was his U.S. citizen mother and that [REDACTED] was physically present in the U.S. for a period of ten years between November 26, 1922 and December 9, 1973, at least five years of which occurred after November 26, 1936, when [REDACTED] turned fourteen.

The record contains the following evidence relating to [REDACTED] maternal relationship to the applicant:

A Mexican birth certificate reflecting that [REDACTED] born on December [REDACTED] (mother) and [REDACTED] (father).

A marriage certificate reflecting that Carolina [REDACTED] married in Mexico on November 27, 1972.

A Baptismal Certificate reflecting that [REDACTED] was baptized on July 6, 1976 at the [REDACTED] Mexico, and that his parents

[REDACTED] (father).

A "Notice of Approval of Relative Immigrant Visa Petition" reflecting that [REDACTED] January 23, 1989 immigrant visa petition, filed on behalf of the applicant, was approved on December 29, 1989.

U.S. school records for the applicant reflecting that his parents were [REDACTED] (mother) and [REDACTED] (father).

Copies of 1978 and 1979 U.S. Federal Income Tax returns filed by [REDACTED] reflecting that her dependent child, [REDACTED] lived with her.

Upon review of the above evidence, the AAO finds that the applicant has established he is the biological and legitimate child of [REDACTED]

The record contains the following evidence relating to [REDACTED] physical presence in the U.S. between November 26, 1922 and December 9, 1973:

A Texas Delayed Certificate of Birth reflecting that [REDACTED] was born in El Roy, Texas on November 26, 1922.

A baptismal certificate reflecting that [REDACTED] was baptized at Our Lady of Guadalupe Church in Austin, Texas on July 14, 1923.

A 1930 U.S. Census record reflecting that [REDACTED] resided with her family in Texas as of April 12, 1930. The Census reflects further that [REDACTED] sibling, [REDACTED] was born to [REDACTED] parents in Texas in 1927.

[REDACTED] "Application for Social Security Account Number", dated October 1955, reflecting that [REDACTED] mailing address was in Mercedes, Texas.

A Social Security Administration, Statement of Itemized Earnings, reflecting the following U.S. work history for [REDACTED] prior to the applicant's birth:

1965 - Pompano Beach, Florida -	\$295.00
1968 - Mercedes, Texas -	\$190.41
1970 - McAllen, Texas -	\$154.05
1971 - Mercedes, Texas -	\$52.65
Mission, Texas -	\$174.42

A marriage certificate reflecting that [REDACTED] married in Mexico on November 27, 1972, but that her address was in Mercedes, Texas.

An August 28, 2005, letter signed by [REDACTED] stating in pertinent part that [REDACTED] was her mother and that she is the applicant's half sister. The affiant states that she was born in Mexico in 1949 and that she moved with her mother to Mercedes, Texas in 1952. She states that she lived with her mother in Texas until she married in April 1968, and moved to Florida. The affiant states further that her mother remained in Texas until 1970, when she moved with the applicant's father to Florida. School records reflecting that [REDACTED] attended school in Mercedes, Texas during the 1961 through 1968 school years. The records indicate that her parent

was [REDACTED]. The AAO notes that the records do not [REDACTED] as a parent.

School records reflecting [REDACTED] born October 13, 1954, attended school in the U.S. between 1961 and 1968. His parents are listed as [REDACTED] and Carolina. The AAO notes that a 1978 Federal Tax Return filed by [REDACTED] contained in the record, reflects that [REDACTED] dependent children are [REDACTED]. The AAO notes further that the district director's decision refers to 1961 through 1968, Texas school records submitted for the applicant's sibling [REDACTED] that list [REDACTED] as a parent. The decision states that, based on the evidence provided, it appears very likely that the applicant's mother was physically present in the United States in each of the years mentioned. The decision states that the uncorroborated evidence does not, however, verify [REDACTED] was in the United States for the full year.

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. 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 combined evidence contained in the record establishes that it is probably true that Ms. [REDACTED] was physically present in the U.S. for ten years between November 26, 1922 and December 9, 1973, and that five of those years occurred after November 22, 1936, when [REDACTED] turned fourteen. Accordingly, the AAO finds that the applicant has established, by a preponderance of the evidence, that Ms. [REDACTED] met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.