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



U.S. Citizenship
and Immigration
Services

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FILE:

A black rectangular redaction box covering the file number.

Office: EL PASO, TEXAS

Date:

JUL 13 2005

IN RE:

Applicant:

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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:

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 dismissed.

The record reflects that the applicant was born in Mexico on May 30, 1945. The record reflects further that the applicant's parents were married and that the applicant's mother, [REDACTED], was born in Texas on August 19, 1901, and was a U.S. citizen. The applicant's father was born in Mexico, and he was not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 201(g) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(g), based on the claim that she derived U.S. citizenship at birth through her mother.

The district director determined the applicant had failed to establish that her mother (Ms. Gonzalez) resided in the United States for the requisite time period set forth in section 201(g) of the Nationality Act. The application was denied accordingly.

On appeal, the applicant indicates that additional evidence regarding her mother's U.S. residence establishes that she is entitled to derivative citizenship through her 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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on May 30, 1945. Therefore, section 201(g) of the Nationality Act is applicable to her derivative citizenship claim.

Section 201(g) of the Nationality Act provides, in pertinent part that derivative citizenship status is accorded to:

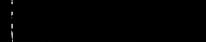
A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years.

The evidence in the record pertaining to Ms. [REDACTED] residence in the United States between her birth on August 19, 1901, and the applicant's birth on May 30, 1945, consists of a Texas Delayed Certificate of Birth reflecting that [REDACTED] was born in Texas on August 19, 1901, and a Certificate of Baptism reflecting that [REDACTED] was baptized at the Church of St. Mary in Marfa, Texas on August 27, 1901.¹

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 establishes that something is probably true.

The AAO finds that [REDACTED] birth certificate and baptismal certificate establish by a preponderance of the evidence that she resided in the United States in August 1901. However, the AAO finds that the record contains no other evidence to indicate or establish that the applicant's mother resided in the United States for ten years prior to the applicant's birth, at least five of which occurred after [REDACTED] turned sixteen years

¹ The AAO notes that the remaining affidavit, rental receipt Social Security Administration and Death Certificate evidence submitted by the applicant relates to [REDACTED] residence in the U.S. after the applicant's birth in 1945.


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old on August 19, 1917. Accordingly, the applicant has failed to establish that she is eligible for a certificate of citizenship pursuant to section 201(g) of the Nationality Act.

ORDER: The appeal is dismissed.