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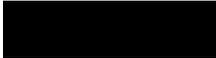
U.S. Citizenship
and Immigration
Services

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FILE:



Office: TUCSON, AZ

Date:

JUN 28 2005

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Tucson, Arizona, 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 August 30, 1946. The applicant's mother, [REDACTED] was born in Idaho on May 21, 1923, and she is a United States (U.S.) citizen. The applicant's father, [REDACTED] was born in Mexico, and he is not a U.S. citizen. The applicant's parents were married on May 24, 1938, in Mexico. 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), (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. §1401(g)), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director determined the applicant had failed to establish he was born out of wedlock, or that his mother [REDACTED] had resided in the United States for the requisite time period set forth under section 201(g) of the Nationality Act (referred to as section 301(g) of the Act). The application was denied accordingly.

On appeal, counsel asserts that [REDACTED] was fifteen years old when she married her husband, and that she therefore required the approval and signature of her parents in order for the marriage to be valid in Mexico. Counsel asserts that [REDACTED] did not comply with these requirements and that her marriage to her husband was therefore void. Counsel asserts further that accordingly, the applicant was born out of wedlock, and that he is entitled to U.S. citizenship pursuant to out of wedlock, citizenship provisions contained in the Nationality Act. On appeal counsel also indicates that he will be sending a brief to the AAO within 30 days. On June 22, 2005 counsel stated that he would not be submitting a brief, therefore the file is considered complete.

The AAO notes that counsel provided no legal basis or evidence to support the claim that [REDACTED] parents had to consent to her marriage or that their signatures were required in order for her parents' marriage to be valid. Moreover, the AAO finds that a plain reading of the marriage certificate contained in the record reflects that the applicant's parents satisfied all of the legal requirements for marriage in the State of Jalisco, Mexico, and that they were, in fact, legally married.

The record contains a May 24, 1938, State of Jalisco, signed and witnessed marriage certificate which states in pertinent part that [REDACTED] a single man of 25 years of age, and [REDACTED] who was 15 years of age and residing with her parents:

[M]anifest their desire to join in matrimony under community property. The contracting parties having met all legal requirements. Article 91 of the Civil Code was complied with Said document was read in the presence of the interested parties and witnesses and there being no objections to the contents of legal impediments, the C. Municipal President in charge of this Registry and who signs below declared joined in marriage under the regimen of community property and under the laws of the parties.

The AAO notes that the record contains a June 6, 1995, letter signed by attorney, [REDACTED] of Nogales, Sonora, Mexico, which concludes that the marriage between the applicant's parents was not in compliance with the Civil Code of the State of Jalisco. The AAO finds the letter to be unpersuasive. The AAO notes that the record does not contain a copy of the actual Civil Code articles referred to. Nor does

the record contain information or evidence, establishing that [REDACTED] qualified as an expert. Moreover, the information contained in the letter fails to demonstrate in any way that the applicant's parents did not comply with legal marriage requirements in the State of Jalisco.

The letter states that Article 91 of the Civil Code of the State of Jalisco requires that:

In the day, place, and hour designated for the celebration of a matrimony the parties involved must be present before the officer of the Civil Registry or be represented by their attorney or agent as described in Article 38, and there should be two witnesses present for each and everyone of them, who can physically identified (*sic*) them.

In a continuous act the officer of the Civil Registry, should read aloud the application for marriage together with all documents that accompany the same and the duties performed. The witnesses should be interrogated as to their knowledge that if the contracting parties are the same persons mentioned in said petition. If this is affirmed, each one of the contracting parties should be asked if it is their own free-will to join in matrimony, and if they answer affirmatively, the officer shall join the parties in the name of the Law and Society.

The information contained in the applicant's parents' marriage certificate reflects that the Article 91 Civil Code requirements discussed in the letter were met.

"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 legitimately to married parents on August 30, 1946. Section 201(g) of the Nationality Act is therefore applicable to his derivative citizenship claim.

Section 201(g) of the Nationality 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: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years.

The evidence in the record pertaining to [REDACTED] residence in the United States between her birth on May 21, 1938, and the applicant's birth on August 30, 1946, consists of the following:

A birth certificate reflecting that [REDACTED] was born in Idaho on May 21, 1938.

A March 21, 1995, letter signed by [REDACTED] stating that that [REDACTED] is her cousin, and that [REDACTED] was born in Humphrey, Idaho and attended school there for her first childhood years before moving to Michoacan, Mexico. [REDACTED] states further that [REDACTED] met [REDACTED] while visiting [REDACTED] mother, and that

married at the age of fifteen and subsequently lived in Durango, Mexico.

The AAO finds that birth certificate establishes by a preponderance of the evidence that she resided in the United States in 1923. However, the AAO finds that the letter written by lacks probative value, as it is unsupported by corroborative evidence and lacks material details regarding specific dates of residence in the United States, the addresses at which she lived, or the schools which she attended. The AAO notes further that even if the letter from were accepted as evidence, it would only establish residence in the U.S. into her early childhood, and not after the age of sixteen.

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. The applicant has failed to establish that his mother resided in the United States for ten years, at least five of which were after the age of sixteen years old, as required by section 201(g) of the Nationality Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.