

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

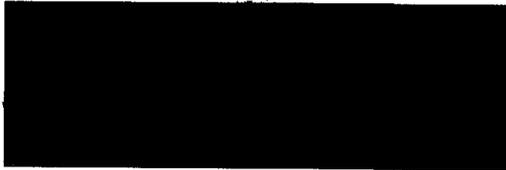
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E2

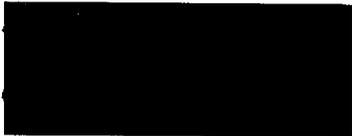


FILE: [REDACTED] Office: SAN ANTONIO, TEXAS Date: **MAR 10 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under sections 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(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, San Antonio, 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 on June 19, 2001, in Mexico. The applicant's mother, [REDACTED], was born in Mexico and she is not a U.S. citizen. The applicant's father, [REDACTED] has two birth certificates – one reflecting that he was born in Texas on March 28, 1966, and one reflecting that he was born in Mexico on March 28, 1966. The applicant's parents married in Texas on March 11, 1998. The applicant seeks a certificate of citizenship under section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g), based on the claim that her father is a U.S. citizen and that she derived U.S. citizenship at birth through her father.

The district director determined that the applicant had failed to establish by a preponderance of the evidence, that her father was a United States citizen, as required by section 301(g) of the Act. The application was denied accordingly.

On appeal, counsel asserts that the evidence contained in the record establishes that the applicant's father (Mr. [REDACTED] was born in the United States and that he is a U.S. citizen. Counsel asserts further that in not approving the applicant's citizenship application, U.S. Citizenship and Immigration Services (CIS) is, in effect, taking away Mr. [REDACTED] U.S. citizenship and expatriating him.

"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 Mexico on June 19, 2001. Section 301(g) of the Act, therefore applies to her derivative citizenship claim.

Section 301(g) of the Act states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) 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 five years, at least two of which were after attaining the age of fourteen years

The record contains the following evidence pertaining to Mr. [REDACTED] citizenship:

A Certificate of Birth recorded by the State of Texas on January 18, 1967, reflecting that [REDACTED] was born at 11 a.m. on March 28, 1966, in Eagle Pass, Texas, at the private home of midwife [REDACTED] on [REDACTED]. The Certificate of Birth reflects that Mr. [REDACTED] mother is [REDACTED] of Mexico, and that his father is [REDACTED] of Mexico. Both parents resided at Ave. [REDACTED] Coahuila, Mexico at the time of the applicant's birth. The Certificate of Birth reflects further that the midwife, [REDACTED] signed Mr. [REDACTED] Certificate of Birth on April 4, 1966, and that the Certificate was received by the local county registrar on May 3, 1966.

A Baptismal certificate reflecting that Mr. [REDACTED] was baptized at the Parish of Our Lady of Guadalupe church in Piedras Negras, Coahuila, Mexico, on September 13, 1966. His place of birth is reflected as Eagle Pass, Texas.

A Mexican Registration of Birth, recorded in Piedras Negras, Coahuila, Mexico on April 14, 1966, reflecting that [REDACTED] was born at 9:45 p.m. on March 28, 1966, in Piedras Negras, Coahuila, Mexico. The registration of birth reflects that Mr. [REDACTED] mother is [REDACTED] and that his father is [REDACTED]. The birth registration reflects further that Mr. [REDACTED] father registered his birth.

A December 8, 2003, sworn statement signed by Mr. [REDACTED] reflecting in pertinent part that he learned of his U.S. birth and birth certificate when he was approximately fourteen years old. Mr. [REDACTED] stated further that he had a Mexican birth certificate, because his father wanted to use it for Mexican school registration purposes.

School records reflecting that Mr. [REDACTED] attended school in Piedras Negras, Coahuila, Mexico.

An affidavit signed by Mr. [REDACTED] mother on September 25, 2003, explaining in pertinent part, that:

On March 28, 1966, while pregnant, I was shopping in the Downtown area of Eagle Pass, Texas. As I was coming out of a store on Main Street, I started feeling sick. I felt I was hemorrhaging. A stranger who saw me recommended to me that I go see [REDACTED] a midwife who was located nearby. I gave birth to a son, now named [REDACTED] at Ms. [REDACTED] house located at [REDACTED]. I made the quick decision to see Ms. [REDACTED] in light of this emergency, because I had difficulty giving birth in the past. Prior to [REDACTED] the pregnancy of three children terminated prematurely. My husband and I decided to register him in Piedras Negras for baptism and school purposes but we were not aware of the impact it would have.

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

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant." (Citations omitted.)

The AAO finds that the fact that Mr. [REDACTED] admittedly has a U.S. and a Mexican birth certificate casts serious doubt onto the claim that he was born a U.S. citizen.

In an attempt to explain the fact that Mr. [REDACTED] has contemporaneous U.S. and Mexican birth certificates, the applicant submits an affidavit written by Mr. [REDACTED] mother. In addition to finding that the applicant's paternal grandmother is clearly an interested witness in the present matter, the AAO finds that the explanations provided in the affidavit are vague and unsupported by corroborative details or evidence, and that the explanations are unconvincing.

For example, it is unclear from the explanation provided by Mr. [REDACTED] mother, why, upon going into labor in front of a public store in downtown Eagle Pass, she was not taken to a hospital. It is equally unclear why, given her serious history of complications with previous pregnancies, Mr. [REDACTED] mother went on the advice of a stranger, to another stranger's private residence to deliver her baby. It is also unclear how Mr. [REDACTED] mother was able to find and go to the stranger's home, where she stayed after delivery of her baby, the date on which she signed Mr. [REDACTED] U.S. birth certificate, why the birth certificate was recorded by [REDACTED] and why the recording of birth was delayed.

Furthermore, the record reflects that Mr. [REDACTED] father recorded the applicant's birth in Mexico prior to the recording of Mr. [REDACTED] U.S. birth certificate. The record additionally reflects that Mr. [REDACTED] parents resided in Mexico at the time of his birth, that Mr. [REDACTED] was baptized in Mexico, and that he lived in Mexico and claimed to be a citizen of Mexico until graduating from school. The AAO notes further that Mr. [REDACTED] claims he knew nothing about his birth in the U.S. until he turned fourteen years old. Moreover, the AAO notes that Mr. [REDACTED] U.S. birth was not registered with U.S. Embassy or Consular officials.

As noted above, 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. Upon review of the cumulative evidence contained in the record, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that his father was born in the United States, or that he is a U.S. citizen, as required by section 301(g) of the Act.

In addition, the AAO finds counsel's assertion that, denying the applicant's citizenship claim constitutes expatriation of Mr. [REDACTED] citizenship, to be without merit. The AAO notes that the present decision finds that the applicant failed to meet her burden of establishing that Mr. [REDACTED] a U.S. citizen. The decision does not find that Mr. [REDACTED] is a U.S. citizen, or that he who took an intentional action, which caused the loss of his U.S. nationality, as set forth in section 349 of the Act.

Because the applicant failed to meet her burden of establishing citizenship under section 301(g) of the Act, the appeal will be dismissed.

ORDER: The appeal is dismissed.