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

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FILE: [REDACTED] Office: EL PASO Date: AUG 07 2006

IN RE: Applicant: [REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, 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 October 25, 1945. The applicant's mother, [REDACTED] was born on March 20, 1924 in Texas, and she was a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico and he was not a U.S. citizen. The applicant's parents married in 1944 in Mexico. The applicant seeks a Certificate of Citizenship based on the claim that he acquired U.S. citizenship at birth through his mother pursuant to section 201(g) of the Nationality Act of 1940; 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)).

The district director determined that the applicant failed to establish that his U.S. citizen mother resided in the United States for five years after she turned sixteen years old, as required by section 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g).

On appeal, the applicant's former counsel contends that the applicant provided sufficient evidence for the record to show that his mother met the residency requirement of section 201(g) of the former Act. Counsel asserts that affidavits alone can be adequate evidence to support the applicant's eligibility. *Brief from Applicant's Former Counsel*, submitted February 15, 2005.

The record contains a brief from the applicant's former counsel; a copy of the birth certificates for the applicant and the applicant's mother; affidavits from the applicant's mother and the applicant's mother's friend; a copy of the divorce certificate for the applicant's parents; a copy of the applicant's mother's marriage certificate for her second husband, and; a copy of the death certificate for the applicant's stepfather. The entire record was considered in rendering this decision.

"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 on October 25, 1945. Section 201(g) of the Nationality 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.

In the present matter, the applicant must establish that his mother resided in the United States for ten years between March 20, 1924 and October 25, 1945, and that five of those years occurred after March 20, 1940, when the applicant's mother reached age sixteen.

Upon review, the applicant has not submitted sufficient evidence to show that his mother met the residency requirement of section 201(g) of the former Act. As evidence to show his mother's location prior to his birth, the applicant provided two affidavits, one from his mother and one from his mother's friend. These affidavits are inconsistent in a significant regard. Specifically, the applicant's mother stated that she resided in the United States for her entire life, yet she made trips to Mexico, including a sojourn beginning in September 1945 in order to be with her husband and give birth to the applicant. *Statement from Applicant's Mother*,

dated February 5, 2003. However, the applicant's mother's friend reported that the applicant's mother "left for Mexico in 1944 until the year of 1946" *Statement from* [REDACTED] dated April 26, 2001. If the applicant's mother was outside the United States from 1944 until 1946, she was not present in the United States for five years between the date she reached age sixteen and the applicant's birthday, as required by section 201(g) of the former Act.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained the inconsistency between the two statements, or submitted adequate evidence to clarify when his mother was in the United States prior to his birth. In the absence of additional probative evidence, the AAO is unable to conclude that the applicant's mother was in the United States for five years between March 20, 1940 and October 25, 1945.

The regulation at 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 AAO finds that the applicant has failed to establish by a preponderance of the evidence that his mother resided in the United States for at least five years after the age of sixteen and prior to the applicant's birth, as required by section 201(g) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.