



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: HARLINGEN, TEXAS

Date: MAR 22 2006

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

[Redacted]

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, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on April 22, 1973 in Mexico. The applicant's mother was born in the United States on February 22, 1945 and is a United States citizen. The applicant's father was born in Mexico and he subsequently became a naturalized U.S. citizen. The applicant's parents were married in 1960. The applicant seeks a certificate of citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director found that the applicant had failed to establish that her mother resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after her mother turned fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, the applicant's representative requested sixty days in which to submit additional evidence; however, as of this date, the AAO has not received any further documentation. The record is therefore complete. The applicant's representative asserts that the evidence on the record establishes the applicant's mother's required period of residency. The AAO has reviewed the entire record and concurs with the applicant's representative in this matter.

"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 in this case was born in 1973; therefore § 301(a)(7) of the former Act controls her claim to derivative citizenship.

Section 301(a)(7) of the former Act states 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 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The applicant must therefore establish that her mother was present in the United States for at least ten years between her mother's date of birth on February 22, 1945 and the applicant's date of birth on April 22, 1973, and that five of these years occurred after the applicant's mother turned fourteen on February 22, 1959. The record, including the applicant's mother's birth and baptismal certificates, her siblings' birth certificates, and her school records, indicate that the applicant's mother was present in the United States from 1945 through the end of the school year (June) in 1954. Additionally, in her affidavit, the applicant's mother states that she remained in the United States from 1945 to 1955. This amounts to ten years of physical presence.

The record must also show that the applicant's mother was present in the United States for five years between February 22, 1959 and April 22, 1973. The record contains two affidavits regarding this period: one executed by the applicant's mother, who stated that she worked for a family in Texas from 1964 to 1969, and another

by the daughter of the applicant's mother's employer, also stating that the applicant's mother worked at her home from 1964 to 1969. The individual who executed the latter affidavit wrote that she was eight years old at the time the applicant's mother began to work in her home, and she included information about the applicant's mother's activities during the five years she was employed there. The AAO finds the affidavits to be sufficiently detailed regarding the period in question so as to constitute persuasive evidence of the applicant's mother's physical presence.

Upon review of the record, the AAO concludes that the evidence shows that the applicant's mother was present in the United States from 1945 to 1955, when she was about ten years old, and again from 1964 to 1969, which period was subsequent to her fourteenth birthday. Hence, the record establishes that her mother was physically present in the United States for ten years between 1945 and 1973, at least five years of which occurred after 1959, in compliance with § 301(a)(7) of the former Act.

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 met her burden and is thus eligible for citizenship under § 301(a)(7) of the former Act.

ORDER: The appeal is sustained.