



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

Office: HARLINGEN, TX

Date:

NOV 22 2006

IN RE:

Applicant [REDACTED]

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the  
Immigration and Nationality Act of 1952, 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, Chief  
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 May 17, 1965 in Mexico. The applicant states that her father, [REDACTED] now deceased, acquired U.S. citizenship as a result of his military service during World War II. The applicant's [REDACTED] was at the time of her birth, a citizen of Mexico and, based on the Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents were married on June 27, 1964. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her father.

"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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in Mexico on May 17, 1965. Therefore, she must establish her claim to U.S. citizenship under section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), the applicable immigration statute in effect in 1965.

Section 301(a)(7) of the 1952 Act states, in pertinent part, 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The applicant must, therefore, establish that her father [REDACTED] was a U.S. citizen at the time of her birth and that he, prior to her birth, met the physical presence requirements set forth above.

The district director denied the applicant's Form N-600 based on his determination that the record failed to provide the documentation necessary to establish [REDACTED] as a U.S. citizen at the time of the applicant's birth. However, the AAO finds the record to contain a copy of [REDACTED] military discharge papers indicating that at the time of his January 29, 1946 separation from military service, he was a U.S. citizen. While the AAO notes that the date of birth listed on [REDACTED] discharge papers is December 12, 1914, rather than the December 12, 1908 date listed on [REDACTED] birth certificate, this discrepancy does not undermine the document as proof of [REDACTED] acquisition of U.S. citizenship at some point prior to his separation from military service. The regulation at 8 C.F.R. § 341.2(c) requires only that the applicant establish her claim to U.S. citizenship by a "preponderance of the evidence." The AAO finds the discharge papers of [REDACTED] to satisfy this requirement. Therefore, the record demonstrates that [REDACTED] was a U.S. citizen at the time the applicant was born.

Proof related to [REDACTED] presence in the United States for the requisite period includes:

- An application for federal employment signed on March 10, 1957 listing [REDACTED] employment as a propeller mechanic at Eglin Air Force Base in Pensacola, Florida; his employment as a technician at the Oak Ridge National Laboratory in Oak Ridge, Tennessee from October 1951 to November 1955; his studies between June 1950 and June 1951 in Knoxville, Tennessee; and his employment as a research

assistant at the Fairchild Engine and Airplane Corporation between February 1946 and April 1950.

- [REDACTED] discharge papers, which establish that he served in the U.S. military between June 9, 1942 and January 29, 1946, and which also indicate that his address at the time of his entry into military services was [REDACTED]. Further documentation of [REDACTED] military service includes: a Department of Veterans Affairs letter certifying his military service, a certificate of appreciation issued to [REDACTED] by the U.S. Army Air Force, his diploma from the Army Air Forces Technical Training Command, his Veterans administration registration card, and an undated and open letter to "fellow veterans" from General Omar Bradley.
- Pages from a 1940 U.S. college yearbook, *The Railsplitter*, showing [REDACTED] photograph and indicating college activities for the years 1936, 1937, 1939 and 1940.<sup>1</sup>
- A photograph of [REDACTED] with men in military uniform, unidentified as to date or location.
- A birth certificate for a [REDACTED] born on January 13, 1954 in Oak Ridge, Tennessee, which lists [REDACTED] the applicant's father.
- A security clearance issued to [REDACTED] by the Atomic Energy Commission on September 9, 1959.
- Three identification cards, one issued to [REDACTED] as an Oak Ridge resident in 1946, the second by the naval base at Pensacola, Florida without a legible date of issuance, and the third by General Electric, Atomic Power Equipment Department also without a legible date of issuance.
- A March 31, 1964 postcard addressed to the applicant's mother and mailed in Giddings, Texas, but with an illegible signature.

To satisfy the physical presence requirements of section 301(a)(7) of the 1952 Act, the above evidence must establish that the applicant's father was physically present in the United States for a total of ten years, at least five of which followed his 14<sup>th</sup> birthday, prior to May 17, 1965, the date of the applicant's birth. Based on the record before it, the AAO finds the evidence submitted by the applicant to be sufficient to establish that her father was physically present in the United States for at least ten years prior to her birth, all of which followed his 14<sup>th</sup> birthday. Pursuant to the language of section 301(a)(7) of the 1952 Act, which provides that honorable military service may be used in the computation of physical presence, [REDACTED] military service establishes three years, seven months and 21 days of physical presence in the United States. The remaining seven plus years of presence are established by the college yearbook, which identifies [REDACTED] [REDACTED] being active in campus extracurricular activities during the 1936, 1937, 1939 and 1940 school

<sup>1</sup> *The Railsplitter* yearbook is published by Lincoln Memorial University in Tennessee.

years; the 1954 birth certificate of a daughter in Tennessee; the 1946 identification card issued to Mr. [REDACTED] as a resident of Oak Ridge, Tennessee; and the 1959 Atomic Energy Commission security clearance issued to [REDACTED].

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met her burden in this proceeding and the appeal will be sustained.

**ORDER:** The appeal is sustained. The petition is approved.