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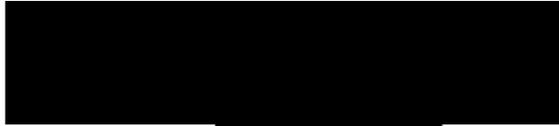
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date:

AUG 15 2007

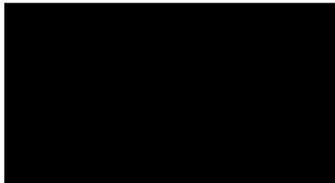
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1421(c).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas and a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed. The matter will be reopened by the AAO *sua sponte*. The December 15, 2006 decision will be withdrawn and the application will be approved.

The record reflects that the applicant was born on May 24, 1962 in Mexico. The applicant's mother, [REDACTED] was born on July 5, 1937 in Mexico and acquired U.S. citizenship at her birth. The applicant's father, [REDACTED], was at the time of her birth, a citizen of Mexico and, based on the applicant's Form N-600, Application for Certificate of Citizenship, remains a citizen of that country. The applicant's parents married on December 1, 1972. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

The director denied the Form N-600 based on his determination that the record did not establish that the applicant's mother had met the residency requirements of section 301(a)(7) of the Act. On appeal, counsel contends that the director should have considered the applicant's claim under section 309(c) of the Act, 8 U.S.C. § 1421(c), because she was born out of wedlock to a U.S. citizen mother. The AAO agrees.

"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 Mexico on May 24, 1962 to a U.S. citizen mother who was then unmarried. Therefore, her claim to U.S. citizenship must be judged under section 309(c) of the 1952 Act, as amended, the applicable immigration statute in effect in 1962.

Section 309(c) of the Act states:

[A] person born, after December 23, 1952, outside the United States and out of wedlock, shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record includes the certificate of citizenship issued to the applicant's mother on April 21, 1997, which establishes her U.S. citizenship as of the date of her birth on July 5, 1937. It also provides a copy of the December 1, 1972 marriage certificate for the applicant's parents. Accordingly, the applicant has established that she was born out of wedlock to a U.S. citizen mother. The only remaining issue before the AAO is whether the record demonstrates that prior to the applicant's birth, her mother was physically present in the United States for the continuous period of one year.

Upon reopening, the AAO finds that the record sufficiently establishes the required physical presence of the applicant's mother in the United States. The record contains a statement from the applicant's father, and two statements from her mother, in which they describe their residence in the United States prior to the applicant's birth. *See Statement from Applicant's Father; Statement from Applicant's Mother*. Specifically, the applicant's parents stated that they resided in Harlingen, Texas for several years until just prior to the birth of one of the applicant's siblings on August 21, 1957. *Id.* They further indicated that the applicant's father had

no legal status during this period, and they returned to Mexico after being apprehended by U.S. immigration authorities. *Id.* The applicant's father described U.S. policy at the time of his apprehension, and noted that he and the applicant's mother returned to Mexico in order to remain together. *Statement from Applicant's Father.* The applicant's father recounted the address and location where he and the applicant's mother resided in Harlingen, Texas, and the type of work he performed during that time. *Id.*

In a subsequent statement, the applicant's mother indicated that her parents brought her to the United States at the age of two. *Second Statement from Applicant's Mother*, dated March 3, 2006. She provided that she and her family resided in a Hotel in McAllen, Texas where her parents worked. *Id.* She stated that she remained there without interruption until she was approximately age eight. *Id.* The applicant's mother further indicated that she and the applicant's father moved to the United States in 1952 after meeting in [REDACTED] and that they departed in August 1957. *Id.* This date of arrival in the United States is inconsistent with the applicant's mother's and father's prior statements, as they initially stated that they moved to Harlingen together in 1954. *Statement from Applicant's Father; Statement from Applicant's Mother.* It is noted that the statements from the applicant's parents are the only evidence that the applicant provides to show her mother's presence in the United States prior to his birth.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Affidavits alone may serve as sufficient evidence to show a fact by a preponderance of the evidence when they are detailed and consistent. The inconsistency in the date that the applicant's parents arrived in the United States together cannot be overlooked. However, if the later arrival date of 1954 is considered, the applicant's mother still accrued approximately two and one half years of presence in the United States during that period. The remaining statements from the applicant's parents present adequate detail to show that it is more likely than not that they were in the United States together for at least one year prior to the applicant's birth. The applicant's mother further described a period of residence of approximately six years in the United States when she was a young child.

Based on the foregoing, the AAO finds that the applicant has submitted sufficient evidence that her mother "had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year" prior to his birth. Section 309 of the former Act. Therefore, the applicant has established that her mother met the physical presence requirement of section 309 of the Act.

The applicant has therefore met her burden of proof in the present matter. The December 15, 2006 decision in this matter will be withdrawn and the application will be approved.

ORDER: The December 15, 2006 decision is withdrawn and the application is approved.