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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HARLINGEN, TX Date: **AUG 29 2007**

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.

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 the matter 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 May 5, 1943. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on August 22, 1941. The applicant's mother is a native-born U.S. citizen, born on October 17th, 1924 in Corpus Christi, Texas. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen mother.

The district director concluded that the applicant had failed to establish that her mother had the required physical presence in the United States. The district director thus found the applicant ineligible for citizenship and denied the application accordingly.

On appeal, the applicant submits a letter from her mother stating that she resided in the United States from 1938 to 1942. The applicant also submits photographs, two copies of certificates of citizenship pertaining to [REDACTED] and [REDACTED], a statement in Spanish signed by [REDACTED], and a letter in Spanish signed by [REDACTED].

"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 the present matter was born in 1943. Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

Section 201(g) of the Nationality Act of 1940 stated 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 her mother resided in the U.S. for ten years between October 17, 1924 and May 5, 1943, and that five of those years occurred after October 17, 1940, the applicant's mother's 16th birthday.

The applicant was born in 1943, when her mother was 18 years old. The applicant's mother therefore cannot establish that she resided in the United States for five years after she turned 16 prior to the applicant's birth.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*,

20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.