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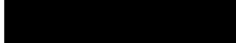
U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date:

DEC 12 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. § 1409(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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas and was before the Administrative Appeals Office (AAO) on appeal. The AAO initially dismissed the appeal on December 15, 2006. The matter was reopened *sua sponte* and a new decision approving the application was issued by the AAO on August 15, 2007. The matter is now before the AAO on Service motion to reopen. The director's and the AAO decisions will be withdrawn, and the matter remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born on May 24, 1962 in Mexico. The applicant's mother, Zenaida Bernal, 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 registered their marriage in Tamaulipas, Mexico 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 former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7). On appeal, counsel maintained that the director should have considered the applicant's claim under section 309(c) of the Act, 8 U.S.C. § 1421(c), because the applicant was born out of wedlock to a U.S. citizen mother. The AAO dismissed the appeal finding that the applicant had not established the requisite residence in the United States. The AAO then *sua sponte* reopened the matter, and approved the application finding that her parents' marriage was not registered in Mexico until after the applicant's birth.

On service motion, the director asked that the AAO reverse its decision because the applicant's parents had established a common-law marriage under Texas law and therefore, the applicant was not born out of wedlock. In response to the motion, counsel asserts that the issue of common-law marriage has never been addressed and the applicant has not had the opportunity to review the evidence in the file relating to the common-law marriage. He requests copies of all documents, memorandums and applications used to reach this conclusion. He also requests a period of 30 days after receipt of the documents in which to respond.¹

The director's and the AAO decisions in this matter are withdrawn and the matter is remanded to the director to address the question of whether the applicant's parents entered into a common-law marriage in Texas prior to the applicant's birth. The director shall issue a new decision fully outlining what information was used in determining that the applicant's parents had a common-law marriage under Texas law. The director shall then address the applicant's eligibility for U.S. citizenship under either section 301(a)(7) or 309 of the former Act, 8 U.S.C. §§ 301(a)(7) or 309, depending on whether the applicant is determined to have been born in wedlock or out of wedlock. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The previous decisions in this matter are withdrawn and the matter remanded to the director for further action consistent with the present decision.

¹ The AAO notes that numerous exhibits were included with the service motion, but it is unclear whether they were all made available to counsel.