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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA Date: NOV 29 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, 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 November 8 1959. The applicant's parents, as indicated on her birth certificate, are [REDACTED]. The applicant's parents were married on November 5, 1956 in New Mexico. The applicant's mother was a native-born U.S. citizen, born on March 20, 1924 in Texas. The applicant seeks a certificate of citizenship under section 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 he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded 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 under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), and denied the application accordingly.

On appeal, the applicant, through counsel, submits a brief contending that the district director erred in applying section 301(a)(7) of the former Act and should have instead applied section 301(g) of the Act, as amended. The applicant in any event contends that her mother had the required physical presence, and that she therefore acquired U.S. citizenship at birth.

"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 1959. Section 301(a)(7) of the former Act therefore applies to the present case.

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.

Section 301(g) of the Act, 8 U.S.C. § 1401(g), as amended, provides, in relevant part that the following shall be nationals and citizens of the United States:

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 five years, at least two 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, or periods of employment with the United States Government or with an international organization . . . ,

or any periods during which such citizen parent is physically present abroad ... may be included in order to satisfy the physical presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

The applicant contends that the last sentence of section 301(g) of the Act “applies to the entire INA § 301(g) section and leaves no room for interpretation.” See Applicant’s Appeal Brief at 4. Contrary to the applicant’s contention, however, the last sentence of section 301(g) of the Act is specifically limited to the text of section 301(g) that follows the word “*Provided,*” i.e. the “proviso.” As noted above, “[t]he 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*, 247 F.3d at 1029 (citations omitted).

The AAO concludes that the applicable law in this case is section 301(a)(7) of the former Act, as in effect in 1959 when the applicant was born.

Thus, the applicant must thus establish that her mother was physically present in the United States for at least ten years prior to November 8, 1959 (the applicant’s date of birth), at least five of which were after March 20, 1938 (applicant’s mother’s 14th birthday).

The record contains, in relevant part, the applicant’s birth certificate, the applicant’s mother’s birth certificate, the applicant’s aunt’s birth certificate, the applicant’s parents’ marriage certificate, two affidavits, and a copy of a FICA earnings report.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The AAO notes that the applicant indicated on her Form N-600, Application for Certificate of Citizenship, that her mother had been physically present in the United States from 1924 to 1943 and from 1950 to 1971. On appeal, the applicant and her aunt submit affidavits stating that the applicant’s mother resided in the United States until 1936, and then returned to the United States on or about 1946. The applicant’s aunt was born in 1939 in Mexico. The FICA earnings statement submitted by the applicant indicates that her mother earned \$99 in 1958 and \$0 in 1959.

The AAO notes that the affidavits submitted are inconsistent with the information provided in the Form N-600. The AAO further notes that there is no corroborating evidence suggesting that the applicant’s mother returned to the United States earlier than 1956. Although the affidavits offer some detail, and suggest that the applicant’s mother spent her early childhood in the United States, the applicant’s mother’s residence in the late 1940’s and 1950’s is unclear at best. Although it is possible that the applicant’s mother was physically

present in the United States prior to 1959, the applicant has not established that her mother was physically present in the United States for five years after attaining the age of 14.¹

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). The U.S. Supreme Court has further stated “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts ‘should be resolved in favor of the United States and against the claimant.’” *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), 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 failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that with respect to the applicant’s mother’s physical presence after the age of 14, the applicant has at most established that her mother was in the United States when she married in 1956 and at some point in 1958. The applicant has not established, by a preponderance of the evidence, that her mother was physically present in the United States for the required five year after attaining the age of 14. The applicant has also not established that her mother was physically present for two years after attaining the age of 14, as is claimed in her Appellate Brief.