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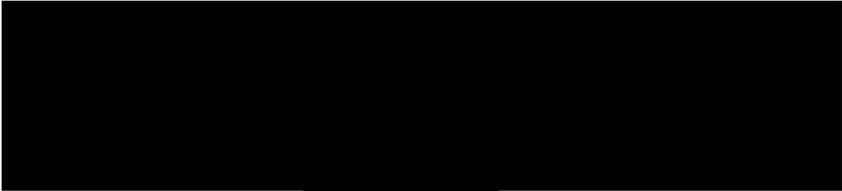
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: SAN DIEGO, CA Date: JAN 07 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Diego, California 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 October 16, 1953 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico on July 22, 1953. The applicant's mother was a U.S. citizen, born in Battle Creek, Michigan on August 1, 1917. The applicant seeks a certificate of citizenship claiming that she acquired citizenship at birth through her mother pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The district director denied the applicant's citizenship claim, finding that she had failed to establish that her mother was physically present for five years after attaining the age of 14. The application was accordingly denied.

On appeal, the applicant claims that the district director erred in calculating her mother's physical presence and that the required 5 years of physical presence after attaining the age of 14 must be inferred from the evidence submitted.

"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 was born on October 16, 1953. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to her citizenship claim.¹

Section 301(a)(7) of the former Act stated 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.

The applicant must thus establish that her mother was physically present in the United States for at least 10 years prior to the applicant's birth on October 16, 1953, five of which after her mother's 14th birthday on August 1, 1931.

The record contains the following evidence relating to the applicant's mother's physical presence in the United States:

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

- The applicant's and her mother's birth certificate
- The applicant's parents' marriage certificate
- The applicant's mother's divorce certificate indicating her first marriage was entered into in February 1940
- A copy of the applicant's mother's high school reunion brochure
- Copies of the applicant's mother's Mexican travel documents
- A copy of a newspaper photo of the applicant's mother and her family in the United States
- A copy of the non-immigrant visa application filed by the applicant's mother on behalf of the applicant's half-brother dated September 6, 1944
- Declaration of [REDACTED], indicating that the applicant's mother (his sister) was in the United States until January 1936.
- Declaration of [REDACTED] indicating that he resided with the applicant's mother until 1935.

The AAO finds that the applicant has met her burden to prove that her mother was physically present in the United States for 10 years, five of which while over the age of 14. Specifically, the record contains evidence that the applicant's mother graduated from high school in 1935. The declaration of [REDACTED] indicates that the applicant's mother remained in the United States from birth until January 1936. The travel documents and the nonimmigrant visa application suggest that the applicant's mother traveled to and from Mexico in the 1940s, but was in the United States for an extended period of time starting in September 1944. The AAO thus concludes that the applicant has established, by a preponderance of the evidence, that her mother had the required physical presence in the United States.

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 has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.