

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

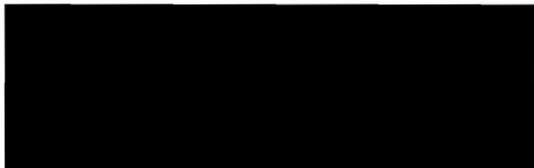
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2



FILE: [REDACTED] Office: SAN DIEGO, CA Date: **MAR 20 2008**

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:



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, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 31, 1976 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's father acquired U.S. citizenship at birth through his parents. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Mexico on December 3, 1973. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).

The district director concluded that the applicant had failed to establish that her father had the requisite period of physical presence in the United States to be eligible to derive citizenship at birth under section 301 of the Act, 8 U.S.C. § 1401. The application was accordingly denied.

On appeal, the applicant states that the district director erred in finding that her father was not physically present in the United States for the requisite period of time. *See* Form I-290B, Notice of Appeal and Applicant's Brief on Appeal. The applicant claims that her father's parents "resided on both sides of the border." *See* Applicant's Brief on Appeal at 2. The applicant further claims that her father's family owned a small property in California and a ranch in Mexico. *Id.* She states that her father "grew up on the ranch working and learning the family trade." *Id.* The applicant states that there is no documentary evidence available to support her claim that her father was physically present in the United States as required. *Id.* at 3. She further states that her father's affidavit fully establishes that he was present in the United States as required. *Id.*

The AAO notes that "[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 v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on December 31, 1976. Section 301(a)(7) of the former Immigration and Nationality Act (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 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

¹ The AAO notes that 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 AAO notes that the district director mistakenly refers to section 301(g) of the Act, 8 U.S.C. § 1401(g), in her decision.

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(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to December 31, 1976, five of which after December 29, 1966 (when her father turned 14 years old).

The Form N-600, Application for Certificate of Citizenship, reflects that the applicant's father was physically present in the United States from 1978 to 1989 and from 1992 to the present. The applicant's father's affidavit states that he was in the United States, in relevant part, from October 1962 to July 1973. *See Applicant's Father's Affidavit.* Notably, the applicant's parents were married on December 3, 1973 in Mexico. *Id.* The applicant's sister [REDACTED] was born in November 1974 in Mexico. *Id.* The applicant was born in December 1976 in Mexico. *Id.* The applicant's brothers were born in the United States in 1979, 1980, and 1991, respectively. *Id.*

In the absence of any documentary evidence to corroborate the applicant's father's claim, and in light of the information given in the applicant's Form N-600, the AAO must find that the applicant has not met her burden to prove that her father was physically present in the United States for the required 10 years prior to 1976, five of which after 1966.

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 AAO finds that the applicant has not met her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.