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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

PUBLIC COPY



EL

FILE: [REDACTED] Office: NEW YORK, NY Date: **OCT 09 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, 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 May 23, 1961 in Canada. The applicant's birth certificate indicates that her parents are [REDACTED] and [REDACTED]. The applicant's mother was born in Los Angeles on July 10, 1927. The applicant's father is not a U.S. citizen. The applicant's parents were married in Los Angeles on October 8, 1950. The applicant's mother lost her U.S. citizenship in 1991. The applicant seeks a certificate of citizenship under section 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, claiming that she acquired U.S. citizenship at birth through her mother.

The district director found that the applicant had failed to establish that her mother had the required physical presence in the United States. The application was accordingly denied. On appeal, the applicant, through counsel, maintains that the director erred in requiring "official certified documentation, issued by a competent authority to do so, to establish the required ... physical presence." *See Applicant's Appeal Brief.* The applicant maintains that her mother was physically present in the United States from birth until 1950.

"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 May 31, 1961. Section 301(a)(7) of the former Act is therefore applicable to her citizenship claim.

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.

The applicant must therefore establish that her mother was physically present in the United States for ten years between 1927 and 1961, five of which after 1944 (the applicant's mother's 14th birthday). The applicant has provided the following evidence of her mother's physical presence:

- 1) The applicant's mother's birth and marriage certificates, dated 1927 and 1950;
- 2) The applicant's mother's junior and senior high school records, dated 1938-1945;
- 3) The applicant's mother's Certificate of Loss of Nationality, issued in 1991, indicating that she resided in the United States from birth to 1950;
- 4) A copy of the applicant's mother's social security statement indicating that she earned employment income from 1937 to 1950; and
- 5) Affidavits executed by the applicant's mother and by a family friend, corroborating the applicant's claim that her mother resided in the United States until 1950.

The AAO finds that the evidence submitted, including the additional evidence submitted on appeal, establishes, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for the required ten years, five of which after attaining the age of 14. The evidence and affidavits submitted consistently indicate that the applicant's mother resided in the United States from birth until 1950. The affidavits are detailed and, to the extent possible, are corroborated by documentary evidence.

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 "[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 met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.