



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: **DEC 03 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 205 of the Nationality Act of 1940

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, 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 February 28, 1942 in Mexico. The applicant was born out of wedlock. His birth certificate lists only his mother, [REDACTED]. The applicant claims that his mother was a U.S. citizen. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant had failed to establish that he had a U.S. citizen parent and therefore could not demonstrate that he acquired U.S. citizenship.¹ On appeal, the applicant maintains that he has established his mother's U.S. citizenship. See Applicant's Appeal Statement. With his appeal, the applicant submits a copy of a border crossing document, issued by the U.S. Department of State in 1949, indicating that his mother acquired U.S. citizenship through her father.

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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born out of wedlock in 1942. Section 205 of the Nationality Act of 1940, Pub L. 76-853, 54 Stat. 1137 (October 14, 1940), is therefore applicable to his citizenship claim.

Section 205 of the Nationality Act of 1940 stated in pertinent part that a child (born out of wedlock whose paternity has not been formally established) acquired the nationality of a U.S. citizen mother:

if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions . . .

The record in this case indicates that the applicant's mother acquired U.S. citizenship through her father pursuant to section 1993 of the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797. See Applicant's Mother 1949 Border Crossing Card, submitted on appeal. The record also contains a 1920 Census document listing the applicant's mother as a resident of El Paso, Texas. Thus, the record establishes the applicant's mother's residence in the United States prior to the applicant's birth (as is required by section 205 of the Nationality Act).

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.

¹ The AAO notes that the director incorrectly cited to section 301(g) of the Immigration and Nationality Act of 1952 (the Act). The Act was not in effect at the time of the applicant's birth and is therefore not applicable in this case.

§ 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.