



U.S. Citizenship
and Immigration
Services

E₂

[REDACTED]

FILE: [REDACTED] Office: SAN DIEGO, CA

Date: **DEC 08 2009**

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).

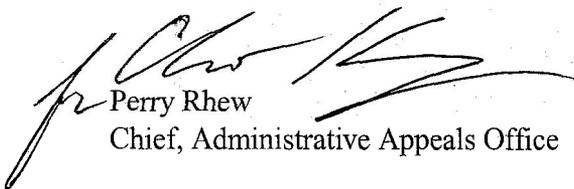
ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
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 January 15, 1978 in Mexico. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's father was born in Mexico on March 26, 1956, but acquired U.S. citizenship at birth. The applicant's parents were married in Mexico in 1980. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director found that the applicant had failed to establish that her father had the required five years of physical presence in the United States after attaining the age of 14 years, and therefore concluded that she did not derive U.S. citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1978).¹

On appeal, the applicant submits an immigration document relating to [REDACTED]. She indicates that this document relates to her brother and establishes that he is a U.S. citizen. The applicant also submits a statement where she disputes the director's finding that her father did not come to the United States until 1972.

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 in 1978. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to this 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.

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the former Act apply to her case. Prior to November 14, 1986, section 309 of the former Act required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments further provided, however, that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See* section 13 of the INAA, *supra*. *See also* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609. Because the applicant's parents were married in 1980, she was legitimated prior to 1986 and section 309(a) of the former Act applies to her case. The AAO finds that the applicant's paternity was established prior to her 21st birthday.

Section 301(a)(7) of the former Act, further requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to her birth in 1978, five of which were after 1970 (when her father turned 14 years old).

The record contains a High School transcript indicating that the applicant's father was in the United States in 1972-1973. The record also includes a Social Security earnings statement reflecting the applicant's father's employment in the United States starting in 1974. The applicant was born in 1978. There is no evidence in the record to establish that the applicant's father was present in the United States for 10 years prior to 1978. He was born in Mexico in 1956, and his certificate of citizenship was issued in 1998. The affidavits submitted by the applicant establish that the affiants knew the applicant's father, but do not provide detailed, probative evidence of his physical presence in the United States. The AAO notes that the affidavit of [REDACTED] indicates that she met the applicant's father when he was 14 (in 1970). [REDACTED] affidavit indicates that she worked with a [REDACTED] from 1972 to 1976.

On appeal, counsel submits a copy of a Form I-44, Border Patrol Report of Apprehension regarding the applicant's older brother. The form notes that a border patrol officer determined that the applicant's brother derived citizenship from their father. The notation does not establish that either the applicant or her brother is a U.S. citizen. The applicant did not submit a U.S. passport, certificate of citizenship or other sufficient evidence of her brother's alleged citizenship. Moreover, United States Citizenship and Immigration Services (USCIS) records show that the applicant's brother was ordered removed to Mexico in 1999.

Most importantly, the Form I-44 provides no information regarding the applicant's father's presence in the United States before the birth of the applicant (or her brother). The brief notation of the border patrol officer does not indicate that he considered this issue in his conclusion that the applicant's brother had derived citizenship through their father. In sum, the applicant has not

established that her father was physically present in the United States for 10 years prior to her birth in 1978.

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 requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (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 this case has failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.