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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

E-2

[Redacted]

FILE:

[Redacted]

Office: ANCHORAGE

Date:

JAN 14 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Anchorage, Alaska, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on April 8, 1969. The applicant's mother, [REDACTED], was born in Imperial, California on April 22, 1929, and was a U.S. citizen. The applicant's mother died in Mexico on January 10, 1979. The applicant's father was born in Mexico on February 16, 1940 and is not a U.S. citizen. The record contains the applicant's parents' marriage certificate indicating that the marriage took place on March 21, 1966 in Mexico. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen mother.

The district director concluded the applicant had failed to establish that her mother had the required physical presence in the United States. The district director further found that the applicant was ineligible for citizenship under the provisions of the Child Citizenship Act of 2000 (the CCA), section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431, because she was over 18 years old when the CCA became effective and was not admitted as a lawful permanent resident.

On appeal, the applicant submitted additional documentation to establish her mother's physical presence in the United States prior to her birth. The documentation in the record consists of a photograph of the applicant's mother in El Centro, California, a letter from the Church of Our Lady of Guadalupe, and letters from [REDACTED] from the applicant, and from [REDACTED] (the applicant's sister). The record also contains affidavits from other family members, including affidavits executed by the applicant's mother's siblings.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in the present matter was born in 1969. Section 301(a)(7) of the former Act therefore applies to the present 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.

The AAO finds that the applicant has established that her mother was born in the United States and was a United States citizen. The AAO further finds that the applicant has established her mother's required ten years of physical presence, at least five of which were after attaining the age of 14.

The record contains a photograph of the applicant's mother as an infant, taken in El Centro, California, the letter from the Church of Our Lady of Guadalupe indicating that the applicant's grandparents are "from Imperial, California" or "from the [United States]," the letter from [REDACTED] (the applicant's cousin), and affidavits executed by the applicant, family friends, and family members indicating that the applicant's mother was physically present in the United States until the age of 21. The record also includes three additional affidavits executed by the applicant's mother's siblings that consistently state that the applicant's mother resided in the United States until the early 1950's. The additional affidavits, executed by the applicant's mother's contemporaries, corroborate the applicant's claim that her mother had the required physical presence in the United States.

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.