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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

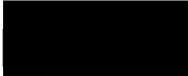


U.S. Citizenship
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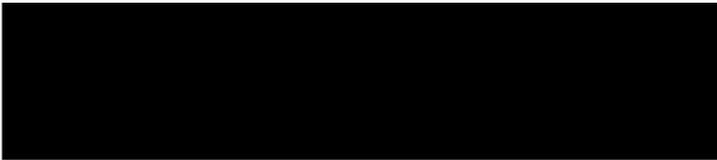
FILE:  Office: LOS ANGELES, CALIFORNIA

Date: JUL 20 2009

IN RE: 

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF PETITIONER:



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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 dismissed.

The record reflects that the applicant was born in Mexico on July 6, 1960. *See Birth Certificate for* [REDACTED]. The applicant's father was born in Chicago, Illinois, on June 5, 1926. *See Birth Certificate for* [REDACTED]. The applicant's mother was born in Mexico, and is not a U.S. citizen. *See Affidavit of* [REDACTED] *Birth Certificate for* [REDACTED].

The applicant's parents were married in Mexico on March 10, 1955. *See Marriage Certificate.* The applicant's father died on December 8, 2001. *See Death Certificate for* [REDACTED]. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her father.

The Field Office Director found that the applicant failed to establish that her father resided in the United States for ten years prior to the applicant's birth, as required by section 301(a)(7) of the former Act. *See Decision of the Field Office Director*, dated Nov. 12, 2008. The application was denied accordingly.

On appeal, the applicant contends through counsel that the Field Office Director erred in concluding that she did not submit adequate proof of her father's physical presence in the United States. *See Form I-290B, Notice of Appeal*, dated Dec. 11, 2008. Although the applicant indicated that she would submit a brief and/or additional evidence to the AAO within 30 days of filing the appeal, as of this date, the record contains no additional evidence. Therefore, the record is considered complete, and the AAO will render a decision on appeal based on the existing record.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").

"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 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). Because the applicant was born in 1960, section 301(a)(7) of the former Act controls her claim to derivative citizenship.¹

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

Section 301(a)(7) of the former Act stated 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

8 U.S.C. § 1401(a)(7) (repealed). The applicant must therefore establish that her father was physically present in the United States for ten years before July 6, 1960, and that at least five of these years were after her father's 14th birthday on June 5, 1940. *See id.*

The applicant presented contemporaneous documentation, written affidavits, and a transcript of her father's testimony before the immigration court during the removal proceedings of her younger brother, to support her claim of her father's physical presence in the United States. The record reflects that the applicant's father was born in Chicago on June 5, 1926, *see birth certificate, supra*, and that he "lived in the United States until early in 1931," *see Affidavit of [REDACTED] supra; see also Affidavit of [REDACTED]*. This time period provided approximately four years and seven months to four years and nine months of physical presence. The applicant's father reentered the United States on September 2, 1952. *See Affidavit of [REDACTED] supra; Affidavit of [REDACTED] supra; Birth Certificate with entry date; Selective Service Registration Certificate; Testimony of [REDACTED]*. The applicant's father returned to Mexico "about a month and one-half before [he] was married" on March 10, 1955. *Affidavit of [REDACTED], supra; Marriage Certificate, supra*. This time period provided approximately two years and four months to two years and five months of physical presence. The applicant's father "stayed in Mexico for approximately two or three months after the wedding," and he then returned to the United States to perform agricultural work until October, 1955. *Affidavit of [REDACTED], supra; see also Affidavit of [REDACTED] supra*. This time period provided approximately four to five months of physical presence during the second half of 1955. From 1956 to 1959, the applicant's father worked in the United States during the harvest season from March to October of each year. *See Affidavit of [REDACTED] supra; Testimony of [REDACTED] supra; Affidavit of [REDACTED], supra*. This time period provided approximately two years and four months of physical presence. The applicant was born on July 6, 1960. *See Birth Certificate for [REDACTED] supra*. This time period provided approximately four months of physical presence in 1960 before the applicant's birth.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). 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); *see also* 8 C.F.R. § 341.2(c) ("The burden of proof shall be upon 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 (Commr. 1989).

Here, the evidence shows that the applicant's father was born in the United States, and that he regularly performed agricultural labor in the United States during the requisite period of time. Given the range of the estimated periods of physical presence, however, the record does not show by a preponderance of the evidence that the applicant's father was physically present in the United States for periods totaling ten years. Rather, the periods of physical presence before the applicant's birth range from nine years and 11 months, to ten years and three months. Given that the low end of the range falls below the requisite ten years of physical presence, the applicant has not shown that it is more likely than not that her father met the physical presence requirement. *See* 8 C.F.R. § 341.2(c); *Matter of E-M-*, 20 I&N Dec. at 79-80.

Section 301(a)(7) of the former Act requires that the applicant establish that her U.S. citizen father was physically present in the United States for ten years. The AAO concludes that the applicant has failed to meet her burden of proving physical presence to establish eligibility for citizenship under the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.