

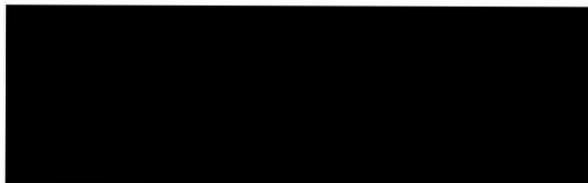
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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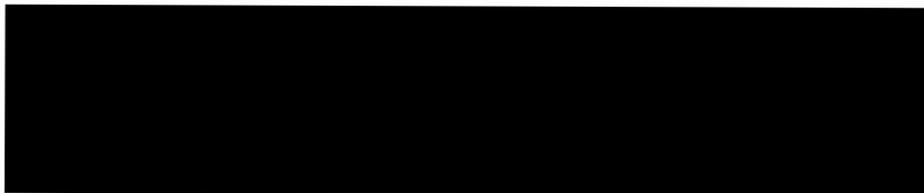
FILE: [REDACTED] Office: SAN ANTONIO, TX

Date: JUL 20 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:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas. An appeal of the denial was dismissed by this office in April 2000, and affirmed upon reopening in August 2001. The matter is now before the Administrative Appeals Office (AAO) on a Motion to Reopen filed on September 29, 2008. The Motion will be granted, the previous decisions of the AAO will be withdrawn, the appeal will be sustained.

The record reflects that the applicant was born on November 6, 1963 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother was born in Mexico on March 8, 1943. She acquired U.S. citizenship at birth through her mother (the applicant's grandmother). The applicant's parents were married in 1961 in California. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7).¹

The district director concluded that the applicant had failed to establish that his mother had the requisite period of physical presence in the United States to be eligible to derive citizenship. The application was accordingly denied. The AAO dismissed the applicant's appeal. The AAO subsequently also dismissed the applicant's Motion to Reopen. The applicant was placed in removal proceedings, and those proceedings were terminated upon order of the immigration judge on December 13, 2004. The immigration judge, in a 39-page written decision, found that the applicant had acquired U.S. citizenship at birth. In 2006, the Board of Immigration Appeals (Board) dismissed an appeal of the immigration judge's order.

In the instant Motion to Reopen, the applicant maintains, through counsel, that his Application for Certificate of Citizenship, Form N-600, should be granted based on the findings of the immigration judge and the Board. Specifically, the applicant states that the district director and AAO's decisions were based primarily on the findings of a discredited government investigation. *See* Applicant's Motion to Reopen. The applicant further claims that the immigration judge, in the context of an adversarial proceeding, had the opportunity to observe and listen to the testimony of the applicant's mother and the government investigator. *Id.* The applicant notes also that he submitted supplemental corroborating evidence to the immigration court. *Id.* The applicant thus requests that this matter be reopened and that his application be granted.

At the outset, the AAO notes that the applicant's Motion is an appropriate Motion pursuant to 8 C.F.R. § 103.5(a)(2). The AAO further notes that the office having jurisdiction over a Motion is the office that made the last decision in the proceeding, in this case the AAO. See 8 C.F.R. § 103.5(a)(1)(ii).

"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*

¹ The AAO notes that Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986. The AAO notes that the field office director refers to section 301(g) of the Act, 8 U.S.C. § 1401(g), in her decision.

Naturalization Service, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1963. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his 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.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his mother was physically present in the United States for at least 10 years prior to November 6, 1963, five of which after March 8, 1957 (when mother turned 14 years old).

Based upon a careful review of the record, including the transcripts of the applicant's removal proceedings, the decisions of the immigration judge and the Board, and the supplemental corroborating evidence submitted to the immigration court, the AAO finds that the applicant has established, by a preponderance of the evidence, that his mother had the required physical presence in the United States.

USCIS is not bound by the Board's or immigration judge's findings regarding the applicant's U.S. citizenship status. The AAO notes first that an immigration judge does not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the immigration judge's termination of deportation proceedings against the applicant was based on the judge's jurisdictional determination that the Service had failed to meet its burden of proving the applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence); *Minasyan v. Gonzalez*, 401 F.3d 1069 (9th Cir. 2005) clarifies further that an immigration judge does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with the USCIS (formerly the Service) citizenship unit and with the federal courts. 8 C.F.R. § 341.3(c), specifies further that USCIS has jurisdiction over certificate of citizenship proceedings, with the burden of proof being on the alien to establish his or her claim to U.S. citizenship by a preponderance of the evidence. Nevertheless, the AAO can rely on relevant testimony obtained by the immigration judge, and on his credibility determination given that he had an opportunity to observe the witnesses. The AAO may also consider evidence submitted to the immigration court in support of the applicant's claim.

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 AAO finds that the applicant has met her burden of proof. The Motion to Reopen is granted, the AAO’s previous decisions are withdrawn and the appeal is sustained.

ORDER: The Motion to Reopen is granted, the AAO’s previous decisions are withdrawn, and the appeal is sustained.