



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA Date: JUL 29 2009

IN RE:

Applicant:

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

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.

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).

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 on September 11, 1957 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico on December 17, 1950. The applicant's mother, a U.S. citizen, was born on September 12, 1930 in California. The applicant seeks a certificate of citizenship claiming that she acquired citizenship at birth through her mother pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director denied the applicant's citizenship claim, finding that she had failed to submit the requested evidence to establish her mother's physical presence in the United States for the required period. The application was accordingly denied.

On appeal, the applicant claims that the director erred in not considering her aunt and uncle's affidavits or the photographs submitted. *See* Form I-290B, Notice of Appeal to AAO. The applicant also states that she is only required to establish her mother's presence for one continuous year under section 301(d) of the Act. *Id.* Further, she maintains that her elderly mother is forgetful and felt under pressure during her interview. *Id.* Finally, the applicant maintains that her siblings obtained certificates of citizenship through her mother. *Id.*

"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 (9th Cir. 2000) (citations omitted). The applicant was born in 1957. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.¹

The AAO notes that the director cited section 301(d) of the Act in error. Section 301(d) of the Act pertains to children of parents one of whom is a U.S. citizen parent and the other a national of the United States. This error is deemed harmless because the director's analysis indeed focused on the requirements of applicable provision of law.

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 and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United

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. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

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 applicant must thus establish that her mother was physically present in the United States for at least 10 years prior to the applicant's birth in 1957, five of which after her mother's 14th birthday on September 12, 1944.

The AAO notes that the record includes, in relevant part, the applicant's mother's birth and baptismal certificate (evidencing her birth in the United States in 1930), the applicant's parents' marriage certificate (evidencing her marriage in Mexico in 1950), the applicant's birth certificate, affidavits executed by the applicant's maternal aunt and uncle, a transcript of her mother's testimony during the applicant's first citizenship interview in 1977, as well as the applicant's first Form N-600, Application for Certificate of Citizenship.² The record also contains copies of photographs of the applicant, her mother and family. These photographs do not relate to the applicant's mother's physical presence in the United States prior to 1957, and after 1944, and are therefore irrelevant to the applicant's claim.

The AAO finds that the record does not support the applicant's claim that her mother was present in the United States as required by section 301(a)(7) of the Act. Specifically, the applicant's first Form N-600, and her mother's testimony in 1977, indicate that the applicant's mother was present in the United States from birth until 1934, 1945 to 1948, in 1953, and 1974 to the present. The AAO notes that the applicant's mother was married in Mexico in 1950, and that some of the applicant's siblings were born in Mexico in 1951, 1952 and 1954. USCIS records indicate that the applicant's siblings obtained lawful permanent residence, but not citizenship through their mother as is claimed by the applicant.

The AAO notes important discrepancies between the statements submitted by the applicant and the mother's 1977 testimony. Specifically, the statements by the applicant's maternal aunt and uncle indicate that the applicant's mother resided in Salinas from 1948 to 1957. As noted above, the applicant's mother was married in Mexico in 1950, and gave birth to children in Mexico in 1951, 1952,

² The record establishes that the applicant's first N-600, Application for Certificate of Citizenship, was adjudicated but the applicant's file does not contain a denial. The AAO notes that, pursuant to the regulations, at 8 C.F.R. § 341.6, "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration . . ." The AAO further notes that the applicant has not provided any additional evidence or argument that would warrant reopening or reconsideration.

1954 and 1957. Further, as noted above, the applicant's mother testimony indicates that she was present in the United States from birth until 1934, 1945 to 1948, in 1953, and 1974 to the present.

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 applicant has not established that her mother was physically present in the United States for 10 years prior to 1957, five of which while over the age of 14 (after 1944). At best, the applicant has only established that her mother was in the United States for four years between 1930 and 1934, three years between 1945 and 1948, and one year in 1953. 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). The applicant has not established that her mother was physically present in the United States as required under section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

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 has failed to meet her burden to establish her mother's physical presence as required by section 301 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.