



U.S. Citizenship
and Immigration
Services

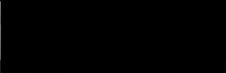
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FILE:



Office: HARLINGEN, TX

Date:

OCT 07 2009

IN RE:

Applicant



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:

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 20, 1981 in Mexico. The applicant's mother, [REDACTED], was born on February 29, 1952 in Mexico but acquired U.S. citizenship at birth through her mother, the applicant's grandmother. The applicant's father is not a U.S. citizen. The applicant's parents were married in Mexico in 1973. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant had failed to establish that his mother had the required 10 years of physical presence in the United States prior to his birth, and therefore concluded that he did not derive U.S. citizenship under section 301(g) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g) (1986).¹

On appeal, the applicant maintains that he has established his mother's physical presence as required by the statute. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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 1981. Section 301(g) of the former Act, 8 U.S.C. § 1401(g), is therefore applicable to this case.

Section 301(g) of the former Act states, in pertinent part, 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. Nevertheless, the substantive requirements of section 301(g) of the Act remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

Section 301(g) 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 1981, five of which after 1966 (when his mother turned 14 years old).

The record contains, in relevant part, a copy of the applicant's birth certificate; the applicant's mother's certificate of citizenship, issued in 2006; affidavits executed by [REDACTED] and [REDACTED] indicating that the applicant's mother worked in the United States starting in 1966; affidavits executed by [REDACTED] and [REDACTED], stating that the applicant's mother worked in the United States from 1963 to 1966, an affidavit executed by [REDACTED] indicating that the applicant's mother worked in the United States starting in 1966, a letter from [REDACTED] [REDACTED] stating that he has personally known the applicant's mother since she was 15 (in 1967) and that she attended church in Texas since then until 1989; as well as the applicant's mother's marriage certificate indicating that she was married in Mexico in 1973.²

The AAO notes that the field office director indicated in his decision that the applicant's older siblings were born in Mexico. The record, however, does not contain evidence of the applicant's siblings' birth dates or birth place. Even if the applicant's siblings were born in Mexico, however, there is sufficient, consistent evidence to establish that the applicant's mother was present in the United States starting in 1966, and possibly as early as 1963. The statute does not require that the applicant establish that his mother was continuously present in the United States.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that "where a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily."

The AAO finds the evidence submitted by the applicant establishes that his mother was physically present in the United States for 10 years prior to 1981, five of which after 1966, as required by the Act.

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"

The record also contains letters relating to the applicant's mother's residence during the period after the applicant's birth. The record also contains evidence relating to the applicant's grandmother, [REDACTED] which does not establish his mother's physical presence in the United States during the statutorily required period. The applicant's earnings statements and undated photographs also do not relate to the applicant's mother's presence in the United States for 10 years prior to 1981, and are therefore irrelevant.

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 his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.