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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

U.S. Citizenship
and Immigration
Services

E₂

FILE:

Office: HOUSTON, TX

Date:

SEP 01 2009

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under section 201(g) Nationality Act of 1940; 6 U.S.C. § 601(g).

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, Houston, Texas, 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 20, 1945 in Mexico. The applicant's parents, as indicated on her birth certificate, were [REDACTED] and [REDACTED]. The applicant's father was a native-born U.S. citizen, born in Texas on May 30, 1910. The applicant's parents were married in Mexico in 1941. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that the applicant's father did not meet the statutory residence requirement. The application was denied accordingly.

On appeal, the applicant maintains that she "gained U.S. citizenship upon entering the U.S. on November 22, 1950." See Applicant's Statement on Appeal. The applicant notes that a copy of her birth certificate includes the handwritten notation "U.S.C. 201(g)" dated in Laredo, Texas in 1950. The applicant further maintains that her father had the required residence in the United States.

"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 1945. The Immigration and Nationality Act went into effect on December 24, 1952 and is therefore not applicable to this case.¹ The Nationality Act of 1940 is applicable to the applicant's claim.

Section 201(g) of the Nationality Act states that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien . . .

The applicant must thus establish that father resided in the United States for 10 years prior to September 1945 (the applicant's date of birth), five of which were after May 1926 (the applicant's father's 16th birthday).

The record contains that applicant's and her father's birth certificates, and the applicant's parents marriage certificate. The record also contains, in relevant part, the statements of the applicant's

¹ The AAO notes that the field office director mistakenly cited to section 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7), in his decision.

uncle and cousin, both indicating that the applicant's father was present and working in the United States, generally, from 1935 to 1950. The applicant also submitted documentation relating to her father's railroad work, evidencing his employment during a number of months between 1947 and 1951. The record also contains a census record dated in 1926 that lists the applicant's father's name (listed as [REDACTED]).

The record does not establish, by a preponderance of the evidence, that the applicant's father resided in the United States for 10 years prior to 1945, five of which after 1926. The documents in the record suggest that the applicant's father worked in the United States, at a railroad, from 1947 to 1951. This employment was after the applicant's birth. The social security records submitted indicate that the applicant's father earned about \$1900 in the years 1937 to 1950. There is no specific indication of employment in any given year, and the railroad records indicate that the applicant's father earned almost \$1550 during the years 1947 to 1949. Therefore, the AAO cannot conclude that the applicant was employed during the years prior to 1945 on the basis of the documentary evidence submitted.

With respect to the statements provided by the applicant's uncle and cousin, the AAO notes that neither is specific with respect to dates. The applicant's uncle states that the applicant's father worked in the fields, partially in contradiction to the railroad employment documents submitted. The statement of [REDACTED] indicates that she is 80 years old. She further states that she "remember[s] very clearly" that the applicant's father was living and working in the United States from 1935 to 1950. The AAO notes that the applicant was a young girl at the time, approximately 7 in 1935 and 12 in 1940 (when she claims to remember that the applicant's father gave her mother money).

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 AAO concludes that the applicant has not established that her father resided in the United States for 10 years prior to 1945. The applicant therefore has not established eligibility for U.S. citizenship under section 201(g) of the Nationality Act. "There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). According to the U.S. Supreme Court "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every

respect. This Court has often stated that doubts ‘should be resolved in favor of the United States and against the claimant.’ *Berenyi v. District Director*, 385 U.S. 630, 671 (1967).

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 not met her burden of proof to establish eligibility for U.S. citizenship under section 201(g) of the Nationality Act, or any provision of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.