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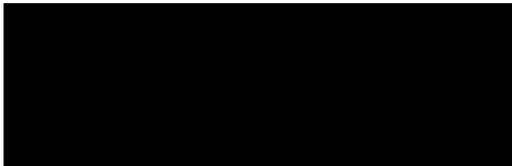
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

E₂



FILE: [REDACTED] Office: HARLINGEN, TX Date:

SEP 25 2009

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the former 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, Harlingen, 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 December 5, 1976 in Tamaulipas, Mexico. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED].

The applicant's father was born in 1940 in Mexico, but acquired U.S. citizenship at birth through his father. The applicant's parents were married in Mexico in 1964. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to section 301 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director concluded that the applicant had failed to establish that her father had the requisite period of physical presence in the United States to be eligible to derive citizenship under section 301 of the Act, 8 U.S.C. § 1401. The application was accordingly denied.

On appeal, the applicant resubmits evidence of her father's presence in the United States and maintains that her claim that she acquired U.S. citizenship at birth should be granted. *See* Form I-290B, Notice of Appeal.

"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 in this case was born in 1976. Section 301(a)(7) of the former Act was in effect at the time of the applicant's birth and is therefore applicable to her case.¹

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.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict

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

compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *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).

In this case, the applicant must establish, by a preponderance of the evidence, that her U.S. citizen parent was physically present in the United States for at least 10 years prior to December 5, 1976, five of which after May 11, 1954 (when her father turned 14 years old).

The record contains the applicant's birth certificate, the applicant's father's certificate of citizenship (issued in 1967), the applicant's grandfather's birth certificate (evidencing his birth in Texas in 1894), the applicant's parents' marriage certificate (evidencing their marriage registration in Mexico in 1964), affidavits executed by [REDACTED], and [REDACTED] (all stating that the applicant's father was present in the United States since 1967), a summary of the applicant's father's FICA earnings (listing income in 1968 and 1971-1976), and a letter from [REDACTED] (the applicant's uncle) indicating that the applicant's father resided with him in Indiana in 1968 and 1969.

Based upon a careful review of the record, the AAO finds that the applicant has failed to establish that her father was physically present in the United States for the required 10 years prior to 1976, five of which after 1954. The AAO notes that the affidavits submitted do not provide sufficient detail regarding the dates when the applicant's father was present in the United States. The affidavits of [REDACTED] and [REDACTED] indicate that the applicant's father was working and living in Texas since 1967, whereas the letter from [REDACTED] indicates that he was in Indiana in 1968 and 1969. The FICA summary indicates income earned in 1968 and from 1971 to 1976, accounting for seven years of work in the United States at best.

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 finds the evidence submitted by the applicant do not establish that her father was physically present in the United States for 10 years prior to 1976 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” 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 not met her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.