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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

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FILE:

Office: HARLINGEN, TX

Date:

SEP 30 2009

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(h) of the Immigration and Nationality Act, 8 U.S.C. § 1401(h)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District 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 May 28, 1928 in Mexico. The applicant's parents were [REDACTED] and [REDACTED]. The applicant claims that her mother was a U.S. citizen, born in Texas in 1901. She seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The district director denied the applicant's claim finding that she had failed to establish that her mother was born in the United States. On appeal, the applicant maintains that her mother was born in the United States. She submits a delayed birth certificate, and two affidavits indicating that her mother was born in 1901 in Texas.

"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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1928. Section 301(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(h) is applicable to this case.¹

Section 301(h) of the Act, 8 U.S.C. § 1401(h), provides for U.S. citizenship for

a person born before ... May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

The applicant must establish, at the outset, that her mother was a U.S. citizen at the time of her birth. In this regard, the AAO acknowledges the affidavits submitted by the applicant as well as the delayed Texas birth certificate purporting to be her mother's. The AAO also notes, however, that the record contains a copy of a birth registration for [REDACTED] (the applicant's mother) indicating that her father, [REDACTED], registered her birth in Tamaulipas, Mexico in 1902. The record also contains immigration documents relating to the applicant's mother, dated in 1970, indicating that she was born in Mexico. The AAO notes further that the applicant's mother's baptismal certificate, which was issued in 1981, proves only that her baptism was in Texas in 1902.

The Board of Immigration Appeals held 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

¹ The law in effect in 1928 was the Act of 1855, which was incorporated into section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1933). The Act of 1855, however, did not allow for transmission of U.S. citizenship through a U.S. citizen mother. In 1994, Congress retroactively provided for such transmission by adding section 301(h) of the Act, 8 U.S.C. § 1401(h). *See* Section 101(a)(2) of the Immigration and Nationality Technical Corrections Act of 1994.

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 provided any evidence or argument that would persuade the AAO to find that her mother was born in the United States. In light of the documentary evidence indicating that the applicant's mother was born in Mexico, the AAO cannot accept the statements made by acquaintances without personal knowledge of the facts or corroborating evidence. The applicant's mother's place of birth is, at best, unclear.

The AAO notes "[t]here 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). The U.S. Supreme Court has further stated "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 evidence in the record does not establish that it is more likely than not that the applicant's mother was born in the United States. Indeed, the AAO finds that the record establishes that the applicant's mother was likely born in Mexico.

The applicant has not established that her mother was a United States citizen. As noted above, the applicant's burden is to establish her mother's place of birth by a preponderance of the evidence, and any doubts must be resolved against the applicant. The applicant in the present case has not met her burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.