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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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[Redacted]

FILE:

[Redacted]

Office: SAN DIEGO, CA

Date:

AUG 18 2010

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1948)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[Redacted Signature]

Chief, Administrative Appeals Office

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

DISCUSSION: The application was denied by the Field Office Director, San Diego, 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 November 16, 1948 in Mexico. The applicant's parents, according to her [REDACTED] and [REDACTED] The applicant's mother was born in California on September 7, 1927. The applicant's parents were married in Mexico on February 2, 1948. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The field office director found that the applicant had failed to establish that her mother had the required physical presence in the United States to acquire U.S. citizenship at birth under section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401(g).

On appeal, the applicant, through counsel, maintains that her mother resided in California for more than the time required to transmit U.S. citizenship. *See* Appeal Brief. Counsel explains that documentary evidence is unavailable because the applicant's mother and grandparents were migrant agricultural workers who did not attend school or have employment records. *Id.* In addition to a copy of the applicant's mother's birth and baptismal certificates, the appeal is accompanied by, in relevant part, a detailed declaration executed by the applicant's mother. Counsel also submitted declarations executed by the applicant and Virginia and Jesus Echeveste.

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, 1028 n.3 (9th Cir. 2001) (citations omitted). The applicant was born in 1948. Section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601 (1948), is therefore applicable to this case.¹

Section 201(g) of the Nationality Act states, in pertinent part:

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: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a

¹ The field office director mistakenly cited to section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401. The Immigration and Nationality Act was not enacted until 1952, and was not in effect at the time of the applicant's birth.

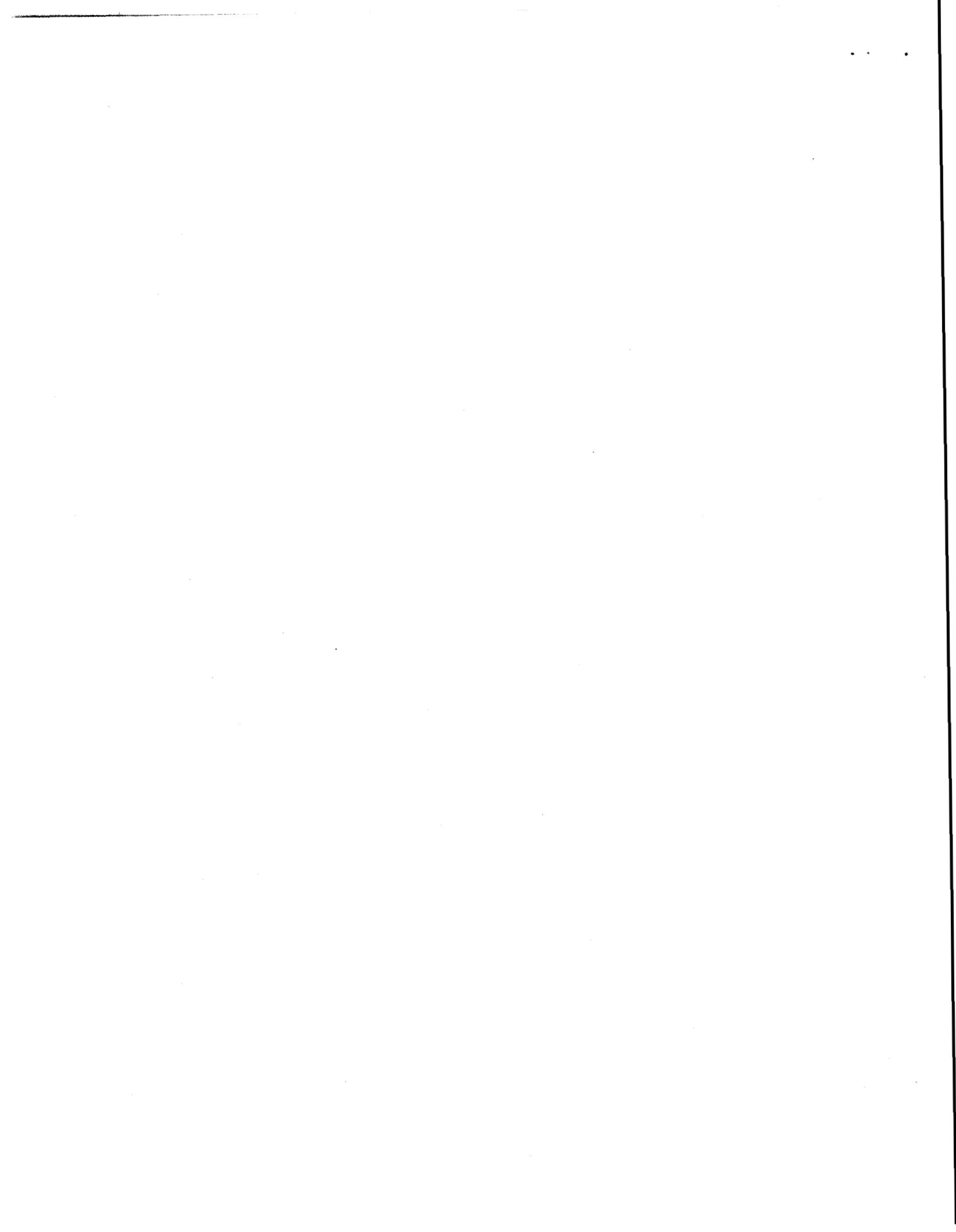
residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The applicant must thus establish, at the outset, that her mother resided in the United States for ten years prior to November 16, 1948, five of which after September 7, 1943 (her sixteenth birthday). The record in this case includes the applicant's birth certificate, the applicant's mother's birth and baptismal certificates, and the applicant's parents' marriage certificate. The record also contains declarations executed by the applicant, her mother, maternal uncle and her cousin.

The applicant's mother explains that her parents were migrant agricultural workers, that she remembers first visiting Mexico when she was ten years old, and later visiting Mexico when she was 21 and met the applicant's father. *See* Declaration of Echeveste, Maria Victoria dated April 9, 2010. In her first declaration, executed in 2009, the applicant's mother states that she "grew up entirely in the United States" and "returned to Mexico occasionally for visits or events..." *See* Declaration of Maria Victoria Echeveste dated January 23, 2009. The applicant's mother recalls that she was married in Mexico, then traveled to the United States, and then returned to Mexico to give birth to the applicant. The applicant's parents were married in Mexico in February 1948.² The applicant was born in Mexico in November 1948. The applicant's mother states in her 2010 declaration that she returned to Mexico when she "was just about eight months pregnant." She stated in her 2009 declaration that she was pregnant when she traveled to the United States after her marriage. The applicant's mother therefore resided in the United States for less than eight months between February and November 1948. Based on the applicant's mother's account alone, it cannot be established that she resided in the United States for five years between September 1943 and November 1948.

The declarations of the applicant, her uncle and cousin also do not establish that the applicant's mother resided in the United States for five years between September 1943 and November 1948. The affidavit of Virginia Echeveste details the applicant's mother's residence after the applicant's date of birth. The declarations of Jesus Echeveste, the applicant's maternal uncle, indicate that the applicant's mother "grew up" in the United States, but do not provide any specific dates or include sufficient details of the family's frequent trips to Mexico. The applicant's uncle states that the family made "several trips back to Mexico to visit and care for [his father's] properties." *See* [REDACTED] Further, the applicant's own declaration provides no relevant information regarding her mother's residence prior to 1948.

² The AAO notes that the applicant's mother states in her 2010 declaration that she was married in April 1948. Her marriage certificate, however, indicates that she was married in February 1948.



The record thus does not establish that the applicant's mother resided in the United States for five years between her sixteenth birthday (on September 7, 1927) and the applicant's birthday (on November 16, 1948). Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. The applicant's mother's statements and marriage certificate indicate that she resided in the United States for less than eight months between February 1948 and September 1948. Therefore, the applicant cannot establish that she acquired U.S. citizenship at birth through her mother pursuant to section 201 (g) of the Nationality Act.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant has not met her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.

