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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: DEC 06 2010

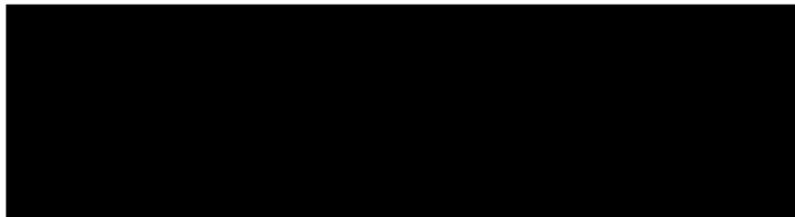
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940, 8 U.S.C. § 601 (1941).

ON BEHALF OF APPLICANT:



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 the \$630 fee. 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,

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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 February 8, 1941 in Mexico to [REDACTED] and [REDACTED]. The applicant's father was born in Mexico on February 17, 1918, but acquired U.S. citizenship at birth through his father. The applicant's parents were married in Mexico in May of 1938, and again in Texas in November 1938. The applicant's mother is not a U.S. citizen. 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 she had failed to establish that her father resided in the United States as required by section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the applicant, through counsel, states that the director did not properly evaluate the record. See Form I-290B, Notice of Appeal to the AAO. Particularly, counsel notes that the applicant's sister was granted a certificate of citizenship on the basis of "basically the same evidence." *Id.*

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, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1941. Section 201 of the Nationality Act is therefore applicable to this case.

Section 201(g) of the Nationality Act stated, 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

The applicant must therefore establish that her father resided in the United States for 10 years prior to 1941, five of which were after he turned 16 (in 1934).

Section 104 of the Nationality Act prescribed that for purposes of section 201 of the Nationality Act, "the place of general abode shall be deemed the place of residence."

The record contains, in relevant part, a copy of the applicant's birth certificate; a copy of the applicant's father's citizenship and marriage certificates; an identification document issued to the applicant's father in 1936 and signed by an immigrant inspector; a copy of the applicant's grandfather's birth certificate; a copy of the applicant's sister's citizenship certificate and affidavits executed by the applicant, her father, her cousin, and her maternal aunt and uncle.

The evidence in the record does not establish that the applicant's father resided in the United States for 10 years prior to 1941, five of which were after 1934 (his sixteenth birthday). The applicant's aunt and uncle state that the applicant's father was employed as a seasonal agricultural worker at various locations in Texas, but they do not give specific dates of his residence in the United States. The applicant's aunt and uncle also attest that they met the applicant's father when he was 15 years old. Accordingly, they cannot verify his residence prior to 1933. The applicant's cousin also has no personal knowledge of the applicant's father's residence prior to the applicant's birth in 1941, as she is a contemporary of the applicant.

In addition, the record contains a significant, unresolved discrepancy regarding the actual dates of the applicant's father's residence in the United States. In his December 28, 2004 affidavit, the applicant's father stated that he was physically present in the United States since 1920 and lived most of his life in [REDACTED]s. His 2004 statement contradicts his assertion on his own Form N-600, filed in 1964, that he arrived in the United States in 1935 and was absent from the United States from 1945 to 1957. The record further indicates that the applicant's father has five younger siblings, all of whom were born in Mexico between 1920 and 1929, when he claims to have been in the United States as a young child. The applicant's father's 2004 affidavit provides no probative details regarding his alleged residence in the United States from 1920 that would resolve these inconsistencies.

On appeal, counsel asserts that the director did not give adequate weight to the administrative file of the applicant's sister who obtained a certificate of citizenship with "basically the same evidence." The applicant's sister's file indicates, however, that her application for a certificate of citizenship was adjudicated without knowledge of the discrepancy in the dates of her father's claimed residence in the United States.

The preponderance of the evidence in this case fails to establish that the applicant's father resided in the United States as required for the applicant to acquire citizenship through him under section 201 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 Immigration and Nationality Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet her burden of proof and her appeal will be dismissed.

ORDER: The appeal is dismissed.