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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: NEWARK, NEW JERSEY Date: DEC 22 2010

IN RE:

APPLICATION: Application for Certificate of Citizenship under section 205 of the Nationality Act of 1940, 8 U.S.C. § 605 (1950)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in the Dominican Republic on September 28, 1950, to unmarried parents [redacted] The applicant's mother was born in the United States on June 26, 1924. The applicant's father was born in the Dominican Republic, and was not a U.S. citizen at the time of the applicant's birth. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

The director denied the application for lack of prosecution because the applicant did not submit copies of her mother's birth and marriage certificates. On appeal, the applicant submits the requested documents.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad to a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Because the applicant was born in 1950 to an unmarried U.S. citizen mother, section 205 of the Nationality Act of 1940 ("the 1940 Act") applies to this case.[1] Section 205 of the 1940 Act provided that a child born out-of-wedlock to a U.S. citizen mother was a U.S. citizen at birth if the mother had resided in the United States or one of its outlying possessions prior to the child's birth. *8 U.S.C. § 605 (1940). See Matter of M--, 4 I&N Dec. 440, 444-45 (Cent. Office* 1951). The residence requirement may be satisfied by temporary visits of short duration. *See Matter of E--*, 9 I&N Dec. 479, 480-81 (Commr. 1961).

The record reflects that the applicant's mother was born in Puerto Rico on June 26, 1924. *See Birth Certificate for Daisy Marquez.* Because she was born in the United States, the applicant's mother necessarily resided in the United States before the applicant's birth on September 28, 1950. *See Matter of E--*, 9 I&N Dec. at 480-81. Although the applicant's parents married on July 16, 1966, when the applicant was 15 years old, the applicant's legitimation through the marriage of her parents did not divest her of the citizenship she had already acquired through her mother at birth. *See Matter of M--*, 4 I&N Dec. at 444-45. Accordingly, the applicant acquired citizenship as the out-of-wedlock child of a U.S. citizen mother under section 205 of the 1940 Act.

The applicant bears the burden of proof 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 C.F.R. § 341.2(c). Here, the applicant has established by a preponderance of the evidence that she met all of the conditions for the acquisition of U.S. citizenship pursuant to section 205 of the 1940 Act.

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[1] Although the director's decision cited to the derivative citizenship provision in former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432, that section is inapplicable to this case because the applicant is seeking a certificate of citizenship based on her birth to a U.S. citizen mother.

Accordingly, the appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for action in accordance with this decision.

ORDER: The appeal is sustained. The matter is returned to the Newark Field Office for issuance of a certificate of citizenship.