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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



U.S. Citizenship
and Immigration
Services

E₂



FILE:



Office: HARLINGEN, TX

Date: FEB 02 2010

IN RE:

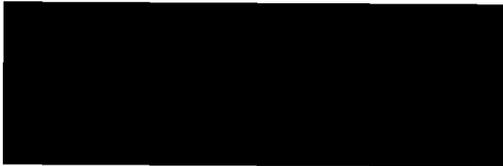
Applicant:



APPLICATION:

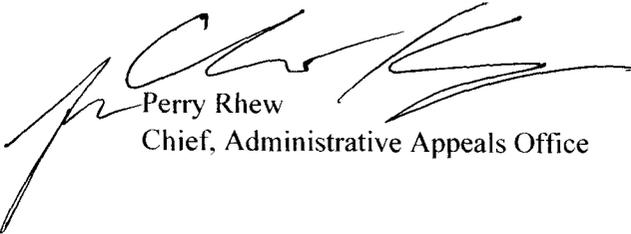
Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)(1966).

ON BEHALF OF APPLICANT:



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.



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 sustained.

The record reflects that the applicant was born on September 1, 1966 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1965. The applicant's mother was born in Rio Rico, in the Horcon Tract, on October 14, 1938. The applicant claims that he acquired U.S. citizenship at birth through his mother.

The district director denied the applicant's claim upon finding that he had failed to establish that his mother had the physical presence in the United States required by section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1966). Specifically, the director noted that the applicant's mother claimed in 1975 that she had been residing in Mexico prior to 1968.

On appeal, the applicant, through counsel, asserts that the director failed to consider his mother's physical presence in Rio Rico, a town located in the Horcon Tract, between 1938 and 1965. *See Applicant's Appeal Brief*. The applicant further maintains that the Horcon Tract was a United States territory until 1970. *Id.* At 2 (citing *Matter of Cantu*, 17 I&N Dec. 190 (BIA; AG 1978)). The applicant explains that because the legal status of the Horcon Tract was not certain until 1978, his mother was unaware that she had been residing in the United States. *Id.*

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" *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on 1966. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7)(1966), is therefore applicable to this case.¹

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), provided 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 applicant must thus establish that his mother was physically present in the United States for 10 years prior to 1966, five of which after attaining the age of 14 (in 1952).

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

At the outset, the AAO must determine whether Rio Rico (prior to 1966, the year of the applicant's birth) was a part of the United States, such that physical presence therein could be counted toward the requirements of section 301(a)(7) of the former Act. The AAO finds that it was. *See Matter of Cantu, supra* at 193 (finding that the Horcon Tract was legally within the United States until the U.S. government formally transferred the territory to Mexico by a treaty signed in 1970).²

The question remains whether the applicant has established that his mother had the required 10 years of physical presence prior to 1966, five of which after 1952. In this regard, the applicant has submitted sworn statements from family and friends, as well as a hand-written school record. The AAO finds that the statements are consistent and sufficiently detailed to establish that the applicant's mother was physically present in Rio Rico (the Horcon Tract) from birth and during her early childhood. The school records establish that she attended school there from 1944 to 1951. The statement of [REDACTED] establishes that the applicant's mother was present in Rio Rico in the late 1950s and early 1960s. Overall, the statements submitted prove, by a preponderance of the evidence, that the applicant's mother was physically present in Rio Rico until her marriage in 1965.

The regulation at 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 applicant in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.

² The Attorney General, reviewing the Board decision in *Matter of Cantu, supra* at 207-208, explained that

Until 1906 the [Horcon] Tract was the southern half of a reverse-S meander of the Rio Grande River, the international boundary between the United States and Mexico, and was a contiguous part of Hidalgo County, Texas. The land within the northern part of the meander was then and has at all times remained Mexican territory. In 1906 an American irrigation company, acting for its own benefit, illegally changed the course of the Rio Grande by cutting a diversionary channel along a line that positioned the Tract on the Mexican side of the new course and ended the contiguity of the Tract with rest of Hidalgo County.

Although the American company's action violated a convention entered into by the United States and Mexico in 1884, it did not have the effect of changing the international boundary. The Tract continued to be American territory until the United States ceded it to Mexico in 1972, receiving in return an equal amount of acreage owned by Mexico north of the Rio Grande. This exchange and others were made in accordance with a treaty signed by the two countries on November 23, 1970, to resolve various pending boundary differences and uncertainties.