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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



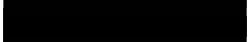
U.S. Citizenship
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Services

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FILE:



Office: HARLINGEN, TX

Date:

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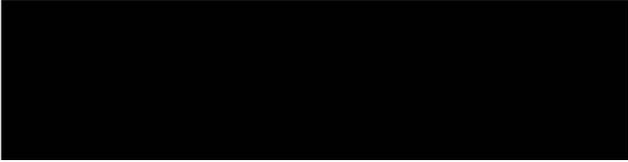
IN RE:



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).

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 Field Office 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 January 21, 1958 in Mexico. The applicant's parents were [REDACTED] and [REDACTED]. The applicant's mother was born in Texas on February 28, 1926. The applicant's parents were married in Mexico in 1945. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1958).¹

The field office director considered the applicant's application as a Motion to Reopen pursuant to the regulations, at 8 C.F.R. § 341.6.² The director noted that the applicant's first Form N-600, Application for Certificate of Citizenship, was denied in 2005 and therefore rejected her current application. The director found that the applicant had not established eligibility for U.S. citizenship, dismissed her Motion to Reopen, and affirmed the denial of her previous application.

On appeal, the applicant, through counsel, maintains that she has established that her mother was physically present in the United States as required by section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The applicant claims that her mother was physically present in the United States, in relevant part, from birth until 1931, and from 1939 until 1945.

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, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1958. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former Act states 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

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

² The regulations, at 8 C.F.R. § 341.6, provide, in pertinent part, that "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration"

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.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that her mother was physically present in the United States for at least 10 years prior to 1958, five of which after 1940 (when her mother turned 14 years old).

The record contains, in relevant part, the applicant's birth certificate, the applicant's mother's delayed birth certificate (issued in 1970 and indicating she was born in Texas in 1926), the applicant's mother's baptismal certificate, the applicant's parents' marriage certificate (indicating that they were married in Mexico in 1945) and a number of affidavits from family and friends. The record also contains a copy of the applicant's mother's social security card, earnings record, and payroll records dated in 1943. There are also documents relating to the applicant's grandparents and aunt that pre-date the applicant's mother's birth, but suggest that her family was residing in the United States. The record also contains photographs of the applicant's family.

The AAO notes that the affidavits submitted by the applicant state, in general terms, that the applicant's mother resided in the United States as a child and worked in the United States, as a migrant worker, in the 1940s. The record also contains a biographical information sheet completed by the applicant indicating that her mother had four children born in Mexico in 1946, 1949, 1952 and 1958. The biographical information sheet also indicates that the applicant's mother's brother was born in 1934 in Mexico. The applicant's mother's younger sister was born in 1932, although her place of birth is not listed on the biographical information sheet. The biographical information sheet indicates that the applicant's mother resided in the United States until 1945.

The AAO finds that the applicant has established that her mother was physically present in the United States for ten years prior to 1958, five of which after attaining the age of 14. The AAO notes that the affidavits submitted consistently indicate, with sufficient detail, that the applicant's mother was employed as a migrant worker in the United States in the early 1940s and that she was physically present in the United States during her early childhood. The affidavits submitted by the applicant are further corroborated by the payroll records dated in 1943.

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). 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 AAO finds that the applicant has met her burden of proof. Her appeal will therefore be sustained.

ORDER: The appeal is sustained.