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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:

Date:

JUL 15 2010

IN RE:

Applicant:

APPLICATION:

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

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 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,

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims her father was born in Texas on April 25, 1915. The applicant's parents were married in Mexico in 1940. 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 claim finding that she had failed to establish that her father had the required residence in the United States. The application was accordingly denied. On appeal, the applicant, through counsel, maintains that her father had the required residence.

"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) (citations omitted). The applicant was born in 1947. Section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601, 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 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 record does not contain evidence of the applicant's father's residence in the United States other than his birth and baptismal certificates (indicating that he was born and baptized in Texas in 1915). The record also contains the birth certificates of the applicant's father's siblings which, with one exception, indicate their birth in Texas prior to the applicant's father's birth and are therefore irrelevant. The record does contain a birth and baptismal certificate relating to the applicant's aunt, her father's younger sibling. The certificates indicate that she was born in 1918 and baptized in

¹ The AAO notes that the director, and the applicant, have 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.

