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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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[REDACTED]

FILE: [REDACTED] Office: EL PASO, TEXAS

Date: JUL 30 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1954)

ON BEHALF OF PETITIONER:

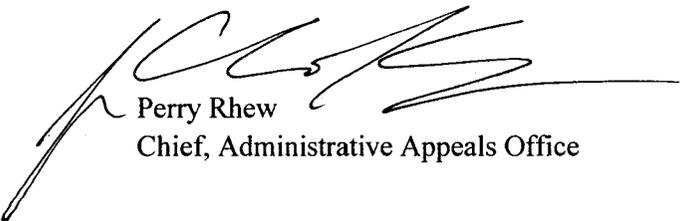
SELF-REPRESENTED

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.

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,



Perry Rhew
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 record reflects that the applicant was born in Mexico on October 9, 1954, to [REDACTED]. The record is inconclusive as to whether the applicant's parents were married at the time of the applicant's birth. While the record contains a Mexican marriage certificate for her parents, her father's death certificate states that he was never married. *See Mexican Marriage Certificate of [REDACTED] registered May 25, 1953; cf. California Death Certificate for [REDACTED], dated May 13, 1974 (indicating that [REDACTED] "never married")*. The applicant claims that her father was a U.S. citizen based on his birth in Puerto Rico on February 6, 1928. The applicant's mother was born in Mexico and was not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her father.

The director denied the application because the applicant failed to provide sufficient documentary evidence to meet her burden of proof. *See Decision of the Field Office Director*, dated Sep. 24, 2009. The director requested, and the applicant was unable to provide: an original birth certificate for her father or secondary evidence that her father was born in the United States; an original marriage certificate for her parents; and an original copy of the applicant's baptismal certificate. *Id.* On appeal, the applicant states that she is attempting to obtain a copy of her father's birth certificate. *See Form I-290B, Notice of Appeal*, filed Oct. 26, 2009. The applicant also submitted an original copy of her baptismal certificate.

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 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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1954. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.¹

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

Additionally, if the applicant was born out of wedlock, the applicant must satisfy the provisions set forth in former section 309(a) of the Act, 8 U.S.C. § 1409(a). Former section 309(a) of the Act provided that children born out of wedlock to U.S. citizen fathers must show that paternity was established by legitimation before the child turned 21. *See* former section 309(a) of the Act.²

Therefore, the applicant must establish that her father was a U.S. citizen, that he was physically present in the United States for no less than ten years before her birth on October 9, 1954, and that at least five of these years were after her father's fourteenth birthday on February 6, 1942. Additionally, the applicant must establish that her parents were married at the time of her birth, or that her paternity was established by legitimation before her 21st birthday on October 9, 1975.

The applicant has failed to establish by a preponderance of the evidence that she meets the requirements set forth in former sections 301(a)(7) and 309(a) of the Act. First, the applicant has not provided a copy of her father's birth certificate or sufficient secondary evidence to meet her burden of showing that her father was born in the United States. Although the applicant referred to a 1930 U.S. Federal Census attachment in her Notice of Appeal, the accompanying document contains no indicia that it was issued by the U.S. Census Bureau or any other office of the federal government. The document is printed on blank paper, lists the applicant's father's approximate birth year as 1928 and states his residence in 1930 as Cabo Rojo, Puerto Rico. The document does not identify where the applicant's father was born and the source of the other information is not identified. Consequently, the document is of no probative value in establishing the applicant's claim that her father was born in the United States.

Second, the documents submitted by the applicant do not establish that her father was physically present in the United States for ten years before the applicant's birth in 1954. *See Social Security Summary* (showing earnings of [REDACTED] for the period 1960 to 1974, after the applicant's birth); *Death Certificate for* [REDACTED] (indicating residence in East Los Angeles beginning in 1958). Third, the affidavit of [REDACTED] lacks sufficient detail regarding [REDACTED] residence. *See Affidavit of* [REDACTED] dated Oct. 2, 2006; *cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members). Additionally, [REDACTED] statement that [REDACTED] family rented an apartment from her family in El Paso, Texas from 1944 to 1969 appears to conflict with [REDACTED] death certificate, which states that [REDACTED] Padilla resided in Los Angeles for 16 years before his death in 1974.

² Former section 309(a) of the Act applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

Finally, the applicant has not met her burden of establishing that her parents were married at the time of her birth. *Cf. Mexican Marriage Certificate of [REDACTED] with California Death Certificate for [REDACTED] (indicating that [REDACTED] “never married”)*.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that she meets the requirements set forth in sections 301(a)(7) and 309(a) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship, and the appeal will be dismissed.

ORDER: The appeal is dismissed.