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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: HARLINGEN, TX

Date: JUN 29 2010

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Former Section 301 of the
Immigration and Nationality Act, 8 U.S.C. § 1401 (1983).

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.

Thank you,

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 November 5, 1983 in Mexico. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's mother was born in the United States on November 17, 1957. The applicant's parents were married in 1979 in Mexico. The applicant seeks a certificate of citizenship pursuant to former section 301 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1401, claiming that she acquired U.S. citizenship at birth through her mother.

The field office director denied the applicant's citizenship claim. The director found that the applicant had failed to demonstrate that her mother had the required period of physical presence in the United States to transmit U.S. citizenship to the applicant.

On appeal, the applicant, through counsel, maintains that her mother was physically present in the United States as required by former section 301(g) of the Act. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO and Exhibits Submitted on Appeal.

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. 2000) (internal citation omitted). The applicant in the present matter was born in 1983. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(g) (1983), therefore applies to the present case.¹

Former section 301(g) of the Act stated, in pertinent part, 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 her mother was physically present in the United States for ten years prior to November 5, 1983, five of which while over the age of 14 (after November 17, 1971).

¹ Former section 301(g) of the Act was designated as such upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this section, previously designated as section 301(a)(7) of the Act, were later amended by the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The record contains a copy of the applicant's birth certificate, her mother's birth and baptismal certificates, her mother's siblings' school records, her maternal grandfather's social security earnings statement, as well as a detailed affidavit (with exhibits) executed by the applicant's mother.

The AAO finds that the applicant has establish that her mother was physically present in the United States for 10 years prior to 1983, five of which while over the age of 14 (after 1971). The AAO notes the applicant's mother's birth and baptismal certificates, her siblings' school records, and her father's social security records which confirm that she was in the United States until 1970. The applicant's mother's fourteenth birthday was in 1971. Her affidavit contains detailed information regarding her presence in the United States in the 1970s, and includes corroborating documentation. The AAO thus concludes that the applicant has established that her mother was physically present in the United States for five years between 1971 and 1983.

The burden in these proceedings is on the applicant to establish her mother's physical presence in the United States by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has met her burden of proof and her appeal will be sustained.

ORDER: The appeal is sustained.