identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E2

[redacted]

FILE: [redacted] Office: SAN JUAN, PR Date: **MAR 1 6 2010**

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 Revised Statutes, as amended by the Act of May 24, 1934, Pub.L. 73-250, 48 Stat. 797

ON BEHALF OF APPLICANT:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, San Juan, Puerto Rico, and came before the Administrative Appeals Office (AAO) on appeal. The AAO issued a Request for Evidence on September 25, 2009. The applicant's response was received by the AAO on February 3, 2010. The appeal will be dismissed.

The record reflects that the applicant was born on June 6, 1939 in the Dominican Republic. The applicant's father, was born in Puerto Rico in 1884. The applicant's mother was not a U.S. citizen. The record suggests that the applicant's parents were not married to each other. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

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, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1939. Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1993) is therefore applicable to this case.

R.S. section 1993 provides that a child:

> born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States … .

A preponderance of the evidence establishes that the applicant's father was born in Puerto Rico prior to April 11, 1899, and that he became a Puerto Rican citizen and U.S. national on April 12, 1900 through the Act of the same date, 31 Stat. 77, Section 7, which gave U.S. non-citizen nationality and Puerto Rican citizenship to all former Spanish subjects who resided in Puerto Rico on April 11, 1899 and continued to reside there as of April 12, 1900. The applicant's father became a U.S. citizen on March 2, 1917 through the Jones Act, the Act of March 2, 1917, Pub.L. 64-368, 39 Stat. 951, which granted U.S. citizenship to all Puerto Rican citizens, including those who were not residing in Puerto Rico on April 11, 1899 but were residing there as of March 2, 1917. The record contains the applicant's father's baptismal certificate evidencing his birth in Puerto Rico 1884 and his son's (the applicant's brother) birth certificate evidencing his birth in Puerto Rico (and the father's residence therein) in 1918. The evidence thus demonstrates that the applicant's father resided in the United States prior to the applicant's birth in 1939 (in accordance with R.S. 1993).

Children born out of wedlock acquired U.S. citizenship at birth under section 1993, above, if they were legitimated under the laws of the father's domicile. *See In the Matter of P---*, 4 I. & N. Dec. 354, 358 (BIA 1951). In *Matter of Cabrera,* 21 I&N Dec. 589, 592 (BIA 1996), the Board of Immigration Appeals (Board) found that a child residing or domiciled in the Dominican Republic may qualify as a legitimated child once his or her father acknowledges paternity in accordance with Dominican law. Article 21 of the Dominican Code for the Protection of Children, which relates to proof of filiation, states that "[s]ons and daughters born out of wedlock may be acknowledged individually by their father either when the birth occurs, or by means of a will, or by a public instrument." *See Matter of Cabrera, supra,* at FN 1. Under the law of Puerto Rico, a child is legitimated upon acknowledgment of paternity by the father. See *Matter of Bautista*, 17 I & N Dec. 122 (BIA 1979); *see also Petition of Fraga*, 429 F.Supp. 549 (D.P.R. 1974) (finding that paternity acknowledged in a birth certificate serves to legitimate a child in Puerto Rico).

The AAO finds that the applicant, whose father's name appears in her baptismal and birth certificates, was legitimated.

The AAO notes that the director evaluated the applicant's citizenship claim pursuant to sections 301 and 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(a) and 1409. The Act, however, was not effective at the time of the applicant's birth. As noted above, R.S. section 1993 is the applicable law in this case. The AAO further notes that the director did not analyze, nor did the applicant provide any evidence, relating to her presence in the United States for purposes of the retention requirement. The retention provisions applicable to the applicant's case required her to establish that she entered the United States after her 14th but before her 23rd birthday and remained continuously physically present in the United States for at least five years.[1]

The applicant's Form N-600, Application for Certificate of Citizenship, indicates that the applicant entered the United States in 2001. Although Public Law 95-432, effective October 10, 1978, eliminated the physical presence requirement for retention of U.S. citizenship, the "[c]hange was prospective in nature. It did not reinstate as citizens those who had ceased to be citizens by the operation of section 301(b) as previously in effect." *See* 7 FAM 1133.2-2(d). Thus, "[p]ersons who were subject to section 301(b) and reached age 26 before October 10, 1978, without entering the

[1] Section 301(c) of the Act, 8 U.S.C. § 1401(c), "applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did not later comply with, the retention requirements of section 201(g) or (h) of the Nationality Act." *See* 7 FAM 1133.5-2(c). Section 301(b) of the Act stated that a child who acquired citizenship at birth abroad pursuant to section 301(a)(7) of the Act must be continuously physically present in the United States for a period of five years between the ages of fourteen and twenty eight in order to retain his or her U.S. citizenship. A two-year retention requirement was later substituted retroactively in 1972. *See* 7 FAM 1133.5-7. Public Law 95-432, effective October 10, 1978, subsequently repealed section 301(b) of the Act, and eliminated completely, the physical presence requirement for retention of U.S. citizenship. *See* 7 FAM 1133.2-2(d). However, the "[c]hange was prospective in nature." *Id. See* 7 FAM 1133.5-13(a) and (c).

United States to begin compliance with the retention requirements lost their citizenship on their 26th birthday. *See* 7 FAM 1133.5-13(a) and (c).

The applicant was required to establish that she entered the United States after her 14th but before her 23rd birthday and remained continuously physically present in the United States for at least five years. On September 25, 2009, the AAO requested evidence to establish that the applicant was present in the United States between the ages of 14 and 28. The applicant responded to the AAO's Request for Evidence by stating that she "did not reside in the United States during the time indicated." Consequently, the applicant did not fulfill the applicable retention requirements to acquire U.S. citizenship through her father.

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 failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.