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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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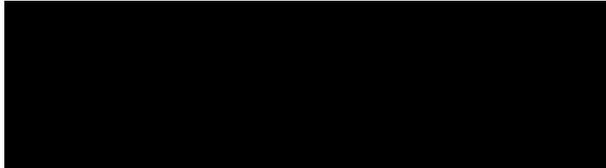
FILE: [Redacted] Office: HOUSTON, TEXAS

Date: **MAY 21 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

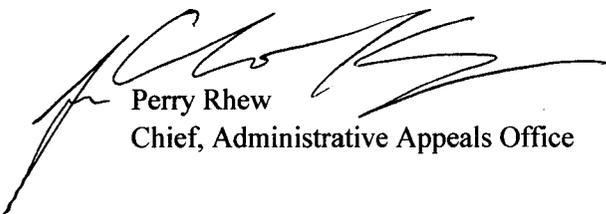
ON BEHALF OF PETITIONER:



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 District Director, Houston, 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 in Mexico on August 17, 1961. The applicant's parents were married at the time of his birth. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen parents.

The director found that the applicant failed to establish that his parents were born in the United States, as required by former section 301(a)(3) of the Act, 8 U.S.C. § 1401(a)(3). *See Decision of the Director*, dated Aug. 13, 2009. The application was denied accordingly. On appeal, the applicant contends through counsel that the preponderance of the evidence shows that his parents were born in the United States. *See Form I-290B, Notice of Appeal*, dated Sep. 10, 2009.

The applicable law for transmitting citizenship to a child born abroad to a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Because the applicant was born in 1961, former section 301(a)(3) of the Act applies to this case.<sup>1</sup>

Former section 301(a)(3) 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 of the United States . . . of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person[.]

The preponderance of the evidence in the record establishes that the applicant's parents were born in the United States, and that they resided in the United States before the applicant's birth.

The applicant claims that his mother was born in Texas on July 17, 1924, and that she resided in the United States from 1924 to 1934. *See Form N-600, Application for Citizenship*, dated Apr. 15, 2005. In support of this contention, the record contains: a delayed Texas birth certificate, issued on July 22, 1964, showing that [REDACTED] was born in the City of Ottine, Gonzales County, Texas, on July 17, 1924; a certificate of baptism, dated March 30, 1987, showing that [REDACTED] was born in Ottine, Texas, and baptized on October 25, 1924; and a copy of the population schedule of the 1930 U.S. census, indicating that Marcelina was born in Texas and that she resided in [REDACTED] County with her family.

The applicant claims that his father was born in Texas on January 22, 1918, and that he resided in the United States from 1918 to 1931. *See Form N-600, Application for Citizenship*, dated Oct. 30, 1968. In support of this contention, the record contains a delayed Texas birth certificate, issued on August 5, 1963, showing that [REDACTED] was born in the City of Gonzales, [REDACTED]

<sup>1</sup> Former section 301(a)(3) of the Act was re-designated as section 301(c) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978).

County, Texas, on January 22, 1918; and death certificate, dated September 10, 1982, showing that [REDACTED] was born in Texas on January 22, 1918. The applicant's father's immigration file (A14-131-566) contains a certificate of baptism, dated May 24, 1961, showing that [REDACTED] was born in Gonzales, Texas, and baptized there in 1918. Additionally, the former Immigration and Naturalization Service (INS) concluded that [REDACTED] was not an alien, and that he did not take any action that would cause the loss of his U.S. citizenship. *INS Report of Investigation*, Aug. 2, 1968. See *Sworn Statement of* [REDACTED], dated May 27, 1968 (stating that his service in a Mexican civil defense unit was involuntary, and that he did not renounce his U.S. citizenship).

Although the record contains a marriage certificate for the applicant's parents indicating that they were born in Aguascalientes, Mexico, a search of timely birth records in Aguascalientes, Mexico produced no Mexican birth records for the applicant's parents. As the preponderance of the evidence establishes that the applicant's parents' births occurred in the United States, the information on the parents' marriage certificate, by itself, is not probative evidence of their births in Mexico.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. 8 C.F.R. § 341.2(c) Here, the applicant has established by a preponderance of the evidence that all the conditions for the automatic acquisition of U.S. citizenship pursuant to former section 301(a)(3) of the Act have been met. Accordingly, the decision of the director will be withdrawn, the appeal will be sustained, and the matter will be returned to the director for the issuance of a certificate of citizenship.

The AAO notes that five of the applicant's siblings filed Applications for Certificates of Citizenship (Forms N-600) on October 30, 1968. There is no evidence in the records that these applications have been adjudicated. See [REDACTED]

**ORDER:** The appeal is sustained. The matter is returned to the Houston District Office for issuance of a certificate of citizenship.