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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: HOUSTON, TX

Date: **MAY 25 2010**

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1975).

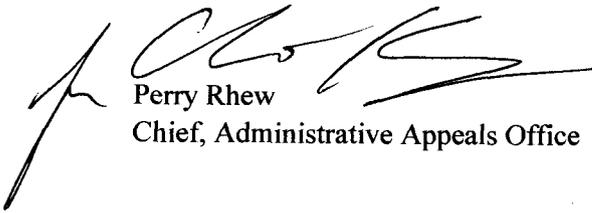
ON BEHALF OF APPLICANT:

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.

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 on June 9, 1975 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. Their marriage was registered in Texas on April 4, 1975. The applicant's father was born in Texas on July 18, 1942. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The district director found that the applicant had failed to establish that her father had the required physical presence in the United States and therefore concluded that she did not derive U.S. citizenship under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1975).¹

On appeal, the applicant submits additional documentation in support of her citizenship claim. Specifically, the applicant submits a school record indicating her father was enrolled in school in Texas from 1955 to 1958.

The AAO notes that "[t]he 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 1975. Former section 301(a)(7) of the Act is therefore applicable to this case.

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 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.

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

Former section 301(a)(7) of the Act, thus requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to 1975, five of which after July 18, 1956 (his fourteenth birthday).

The record in this case includes the applicant's birth certificate; the applicant's father's birth, death and marriage certificates; as well as the applicant's father's military and school records. On appeal, the applicant has submitted her father's high school record indicating he attended tenth through twelfth grade in Laredo, Texas. The school record further states that the applicant's father was born in Texas and that he transferred to the Laredo high school with credits from another school in Texas. The applicant's father's military documents show he was honorably discharged from the U.S. Army Reserve in 1967. The applicant's parent's marriage certificate indicates that they were married in Texas in 1975 before the applicant's birth. The preponderance of the evidence submitted establishes that the applicant's father was physically present in the United States for 10 years prior to 1975, including five years after 1956.

The applicant's burden is to establish her father's physical presence by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The applicant has met her burden and her appeal will be sustained.

ORDER: The appeal is sustained.