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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: [REDACTED] Office: EL PASO, TEXAS Date: OCT 08 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under sections 205 and 201 of the Nationality Act of 1940, 8 U.S.C. §§ 605, 601 (1946)

ON BEHALF OF PETITIONER:

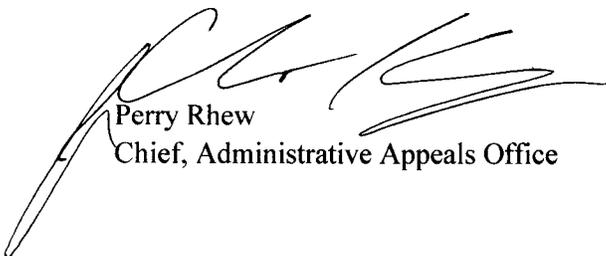
SELF-REPRESENTED

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 Chihuahua, Mexico on July 1, 1946. The applicant claims that both of his parents were born in the United States, and the record shows that they were not married at the time of the applicant's birth. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen parents.

The director, reviewing the application under section 201(g) of the Nationality Act of 1940 ("the 1940 Act"), 8 U.S.C. § 601(g) (1940), found that the applicant failed to establish that his father had the requisite period of residence in United States. *See Decision of the Director*, dated Aug. 21, 2009. The director denied the application accordingly. *Id.* On appeal, the applicant contends that he meets the requirements for a Certificate of Citizenship. *See Form I-290B, Notice of Appeal*, dated Sep. 11, 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 1946 and his parents were unmarried at the time of his birth, section 205 of the 1940 Act applies to this case.

Section 205 of the 1940 Act provided that a child born out-of-wedlock to a U.S. citizen mother was a U.S. citizen at birth if the mother had resided in the United States or one of its outlying possessions prior to the child's birth. 8 U.S.C. § 605 (1940). *See Matter of M--*, 4 I&N Dec. 440, 444-45 (Cent. Office 1951). The residence requirement may be satisfied by temporary visits of short duration. *See Matter of E--*, 9 I&N Dec. 479, 480-81 (Commr. 1961).

The applicant contends that his mother, [REDACTED] was born in Morenci, Arizona on July 28, 1923. *See Form N-600, Application for Certificate of Citizenship*, filed Mar. 31, 2009. In support of this contention, the applicant presented a delayed Arizona Certificate of Baptism, dated November 26, 1963, showing that [REDACTED] was born in Morenci, Arizona, on July 28, 1923, and that she was baptized on August 12, 1923. The applicant also presented a Texas death certificate for his mother, dated July 28, 1966, indicating that [REDACTED] was born in Arizona on a different date -- June 25, 1923. The record does not contain a copy of the applicant's mother's Arizona birth certificate, or other evidence of her U.S. citizenship. On May 18, 2010, the AAO issued a request for evidence, providing the applicant with an opportunity to present proof of his mother's birth in the United States and her residence in the United States before his birth. Because the applicant failed to respond to the request for evidence within the allotted 12-week period, the AAO will issue a decision based on the current record.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, given the inconsistent dates in the two documents referencing the applicant's mother's date of birth, and the applicant's failure to present his mother's birth certificate or other evidence of her birth in the United States, the applicant has failed to establish by a preponderance of the evidence that his mother was born in the United States. Accordingly, the applicant is not eligible

for citizenship as the out-of-wedlock child of a U.S. citizen mother under section 205 of the 1940 Act.

Out-of-wedlock children of U.S. citizen fathers, born after January 13, 1941, and before December 23, 1952, may acquire citizenship under the provisions of former section 301(a)(7) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1401(a)(7). Section 309(b) of the Act, 8 U.S.C. § 1409(b), provided that:

the provisions of section 301(a)(7) shall apply to a child born out-of-wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act while such child is under the age of twenty-one years by legitimation.

Because both of the applicant's parents are listed on the applicant's birth certificate, and the applicant's parents married each other on December 2, 1963, the applicant's paternity was established by legitimation before he turned 21, under the laws of Chihuahua, Mexico, and Texas.

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. . .

The applicant must therefore establish that his father was physically present in the United States for 10 years before his birth on July 1, 1946, and that at least five of these years were after his father's fourteenth birthday on January 23, 1935. *See id.*

The record contains the following evidence relating to the applicant's father's physical presence in the United States: a Birth Certificate, filed in 1922, indicating that [REDACTED] was born on January 23, 1921, in New Mexico; a Death Certificate, filed in 1969, confirming the applicant's father's birth in New Mexico on January 23, 1921; a U.S. Employment Service Card, noting that [REDACTED] reported to an unknown location on June 19, 1944; and numerous documents reflecting the applicant's father's presence in the United States after the applicant's birth in 1946.

Although the evidence shows that the applicant's father was born in the United States, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for ten years before the applicant's birth in 1946.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for the

requisite period. Accordingly, the applicant is not eligible for citizenship under former section 301(a)(7) of the Act.

The applicant has failed to demonstrate that he acquired U.S. citizenship at birth through either of his parents. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.