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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: PHOENIX, AZ Date: SEP 08 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1945)

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.

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, with a fee of \$585. 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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 25, 1945 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's father was born in California on December 21, 1922. The applicant's parents were married in Mexico on January 5, 1944. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director found that the applicant had failed to establish that her father had the residence in the United States required for her to acquire U.S. citizenship at birth under section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601 (1945).

On appeal, the applicant maintains that her father resided in the United States as required. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. On appeal, the applicant submits a copy of documents relating to her sister, a letter from the Federal Bureau of Prisons, her father's social security earnings statement and driver's license record.

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 1945. Section 201 of the Nationality Act is therefore applicable to this case.

Section 201(g) of the Nationality Act states, in pertinent part:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The applicant must thus establish, at the outset, that her father resided in the United States for ten years prior to February 25, 1945, five of which after December 21, 1938 (his sixteenth birthday).

The record in this case includes, in relevant part, the applicant's birth certificate, the applicant's father's birth and baptismal certificates, and the applicant's parents' marriage certificate. The record also contains an affidavit executed by the applicant's father, his social security earnings statement, his school records and letters from the California Department of Motor Vehicles, the Federal Bureau of Prisons and the Social Security Administration. The record also contains documents relating to the applicant's sister's citizenship claim. Additionally, the record contains evidence of the applicant's marriage and divorce, and her school records.

The applicant's father's birth certificate indicates that he was born in California in 1922. His baptismal certificate states that he was baptized in Mexico in 1923. The applicant's father's school records relate to the years 1928-1929 and 1934-1935. A letter from the social security administration states that the applicant's father was issued a social security card in 1940 and his social security earnings statement indicates that the applicant's father was employed in the United States in 1942. The applicant's parents' marriage certificate indicates that they were married in Mexico in January 1944. The applicant's father's affidavit indicates that he resided in the United States since birth. He states that he frequently visited Mexico. Notably, the applicant's father does not mention going to Mexico to avoid the draft. A letter from the Federal Bureau of Prisons indicates that he was convicted of draft avoidance in 1948.

The AAO finds that the applicant has failed to establish that her father resided in the United States for five years between his sixteenth birthday (on December 21, 1938) and the applicant's birthday (on February 25, 1945). Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. The record indicates that the applicant's father was present in the United States in 1940 and in 1942, but the relevant evidence does not establish that he resided in the United States for five years between 1938 and 1945, as required by the Nationality Act. Therefore, the applicant cannot establish that she acquired U.S. citizenship at birth through her father.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant has not met her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.