identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

E2

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: SEP 20 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g) (2004)

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.

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 sustained.

The record reflects that the applicant was born in Mexico on to married parents . The applicant's mother is a U.S. citizen based on her birth in the United States. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g) (2004), based on the claim that he acquired U.S. citizenship at birth through his mother.

The director found that the applicant failed to establish that his mother was physically present in the United States for the requisite period prior to the applicant's birth, as required by section 301(g) of the Act. *See Decision of the Director*, dated Jan. 14, 2010. The director also determined that the applicant failed to provide a copy of his birth certificate to corroborate his relationship to his mother. *Id.* The application was denied accordingly. *Id.* On appeal, the applicant's mother provides evidence to substantiate her physical presence in the United States and her biological relationship to the applicant. *See Form I-290B, Notice of Appeal*, filed Feb. 16, 2010.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 2004. Accordingly, section 301(g) of the Act controls his claim to citizenship.

Section 301(g) of the Act states 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 five years, at least two of which were after attaining the age of fourteen years. . .

The applicant must therefore establish that his mother was physically present in the United States for no less than five years before his birth on February 24, 2004, and that at least two of these years were after his mother's fourteenth birthday on February 26, 1988. *See id.*

On appeal, the applicant's mother explains that the applicant was born by emergency cesarean surgery in Mexico and that she brought him to the United States just two days after his birth. The preponderance of the evidence submitted on appeal establishes that the applicant was born to . *See Consent Decree of Dissolution of Non-Covenant Marriage*, filed Apr. 6, 2009 (finding four children born to the marriage, including); *Letter from Pediatrician* dated Feb. 26, 2004 (confirming the birth of a boy named on February 24, 2004); *Hospital Bill for Patient for Cesarean Surgery*, dated Feb. 26, 2004; *Newborn Supplemental Screening Form* (stating names of applicant and mother).

Further, the evidence submitted on appeal shows that the applicant's mother was born in the United States, and that she met the physical presence requirements set forth in section 301(g) of the Act. Specifically, the record contains ample evidence regarding physical presence in the United States before the applicant's birth, including: her birth certificate, registered on March 7, 1974, showing that was born in Phoenix, Arizona on February 26, 1974; her promotion certificate from California, dated June 17, 1986; her Arizona and California high school transcripts showing attendance from 1988 to 1991; her transcript from Paradise Valley Community College in Phoenix, Arizona showing attendance in 1992; her marriage license and certificate, dated July 21, 1993, showing that was a resident of Phoenix, Arizona; legal documents referencing residence in Arizona in 1996 and 1997; tax records reflecting residence in Arizona in 1995 and 1998; and a letter from Research & Communication Services, verifying that had electric service accounts in her name in Arizona from 1998 to 2006.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has established by a preponderance of the evidence that his mother was physically present in the United States for no less than five years before his birth in 2004, and that he is eligible for citizenship under section 301(g) of the Act. Accordingly, the appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Phoenix Field Office for issuance of a certificate of citizenship.