

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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

E 2.

[REDACTED]

DATE: **AUG 23 2011**

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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

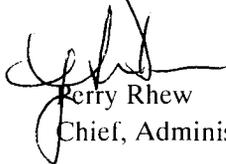
ON BEHALF OF APPLICANT:

[REDACTED]

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,


Jerry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that the applicant was born on March 20, 1945 in Mexico. The applicant's mother, [REDACTED] was born in California on May 18, 1909. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant's parents were married in California in 1926. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her U.S. citizen mother.

The field office director denied the application upon finding that the applicant had failed to establish that her mother had the required period of residence in the United States. On appeal, the applicant, through counsel, maintains that her mother resided in the United States from birth until December 1931. *See Appeal Brief at 2.*

The AAO reviews these proceedings de novo. *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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1945. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), therefore applies to the present case.¹

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

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.

The applicant must thus establish that her mother resided in the United States for ten years prior to March 20, 1945, five of which were after May 18, 1925 (her sixteenth birthday). The record in this case includes, in relevant part, the applicant's birth certificate, the applicant's mother's birth and baptismal certificates, the applicant's parents' marriage certificate, the applicant's siblings birth and baptismal certificates, the applicant's mother's returning U.S. citizen manifest, and census records.

The applicant's mother's birth and baptismal certificates indicate that she was born in California in 1909. The 1920 census information indicates that she was residing in California. Her marriage

¹ The field office director cited section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, as the applicable law. The Act was not in effect at the time of the applicant's birth and is therefore inapplicable.

certificate indicates that she was married in California in 1926. Her older children were born in the United States in 1927 and 1930. Finally, her returning U.S. citizen manifest indicates that she resided in the United States until December 1931.

The AAO finds that the evidence in the record establishes that the applicant's mother resided in the United States for ten years, five of which were after her sixteenth birthday. Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. There is no indication that the applicant's mother departed the United States prior to December 1931. The evidence, including the applicant's mother's birth and marriage records, as well as census records and her children's birth and baptism certificates, consistently indicates that she resided in the United States as required by section 201(g) of the Nationality Act. The applicant has thus established, by a preponderance of the evidence, that her mother resided in the United States for ten years prior to 1945, five of which were after 1925. Thus, the applicant acquired U.S. citizenship at birth through her mother.

"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 met her burden of proof, and her appeal will be sustained.

ORDER: The appeal is sustained.