

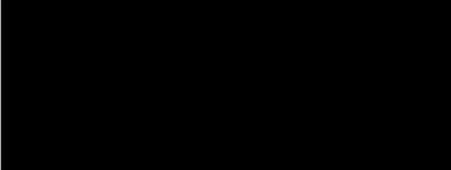
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

E2



FILE:



Office: HOUSTON, TX

Date:

FEB 24 2011

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship

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 Field Office 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 in Mexico on November 22, 1939. The applicant's mother, [REDACTED], was born in Texas on April 29, 1905. The applicant's parents were married in Mexico in 1919. The applicant's father was not a U.S. citizen. 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 determined that the applicant did not acquire U.S. citizenship under section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g). The director found, in relevant part, that the applicant had failed to demonstrate that she had fulfilled the applicable retention requirements to avoid a loss of citizenship. *See* Decision of the Field Office Director. The director further noted that the applicant became a U.S. citizen upon her naturalization in 1999, and that section 324 of the Immigration and Nationality Act of 1952 (the Act), 8 U.S.C. § 1435, does not apply retroactively to confer citizenship upon the applicant at birth.

On appeal, the applicant maintains that the director should not have evaluated her claim under section 201(g) of the Nationality Act. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. Further, the applicant states that she satisfied the applicable retention requirements of section 301(b) of the Act, 8 U.S.C. § 1401. *See* Appeal Brief.

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 was born in 1939. The Revised Statutes of the United States, 1878, § 1993, as amended by the Act of May 24, 1934, Pub. L. No. 73-250, which are applicable to this case, provides that a child:

born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

The applicant's mother was born in the United States in 1905. The evidence in the record indicates that she was also baptized in the United States, and that she had three children in Texas in 1917, 1920, and 1923, respectively. The AAO therefore finds that the applicant has established that her mother had resided in the United States prior to the applicant's birth.

Section 201 of the Nationality Act required, in pertinent part,

. . . That, in order to retain [] 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.¹

The evidence in the record in this case indicates that the applicant worked as a maid in the United States until 1966. The affidavit of [REDACTED] states that the applicant's mother began her work as a maid in January 1953, when she was 15 years old. The applicant's mother, however, was 13 in January 1953. In light of this important discrepancy, the AAO cannot find that the applicant has fulfilled the retention requirements under sections 201(g) and (h) of the Nationality Act.

Nevertheless, the AAO finds that the applicant complied with the applicable retention requirements as specified in section 301(c) of the Act, 8 U.S.C. § 1401(c). Section 301(c) of the Act, 8 U.S.C. § 1401(c), "applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did not later comply with, the retention requirements of section 201(g) or (h) of the Nationality Act." See 7 FAM 1133.5-2(c). Section 301(b) of the Act stated that a child who acquired citizenship at birth abroad must be continuously physically present in the United States for a period of five years between the ages of fourteen and twenty eight in order to retain his or her U.S. citizenship. A two-year retention requirement was later substituted retroactively in 1972. See 7 FAM 1133.5-7.²

The record contains the applicant's children's birth certificates, indicating that they were born in the United States in 1964, 1966, 1967 and 1973, respectively. The record also contains the school records of the applicant's two oldest children as well as the San Antonio City Directory listings for the years 1967 to 1970. The applicant's fourteenth birthday was in November 1953. She turned 28 years old in 1967. As noted above, there is a discrepancy in the record regarding the date when the applicant's mother began working in the United States. Nonetheless, there is

¹ Section 201(h) of the Nationality Act further states that "[t]he foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934."

² Public Law 95-432, effective October 10, 1978, subsequently repealed section 301(b) of the Act, and eliminated completely, the physical presence requirement for retention of U.S. citizenship. See 7 FAM 1133.2-2(d). However, the "[c]hange was prospective in nature." *Id.* See 7 FAM 1133.5-13(a) and (c). The AAO notes that the applicant was over 26 years old on October 10, 1978.

sufficient evidence to establish that she resided in the United States for more than two years between 1953 and 1967. The applicant therefore was physically present in the United States for two years between the ages of 14 and 28, as required by section 301(b) of the Act.

The applicant bears the burden of proof to establish his claimed citizenship 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 of proof and the appeal will be sustained. The matter will be returned to the Houston Field Office for issuance of a certificate of citizenship.

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