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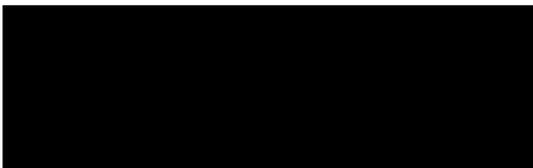
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: HARLINGEN, TX

Date: MAR 03 2011

IN RE:

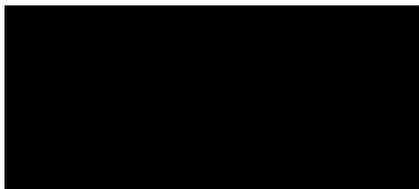
Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1956)

ON BEHALF OF APPLICANT:



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 \$630. 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, Harlingen, 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 on December 12, 1956 in Mexico. The applicant's mother, Ana Salas, was born in Mexico in 1925 but acquired U.S. citizenship through her mother at birth. The applicant's parents were married in Mexico in 1944. 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 mother.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her mother was physically present in the United States as required under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1956).

On appeal, the applicant, through counsel, states that the applicant's mother had the required physical presence in the United States. See Appeal Brief. Specifically, counsel provides a document adding the three-day periods the applicant's mother purportedly spent in the United States to account for about 13 years of physical presence in the United States.

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 1956. Former section 301(a)(7) of the Act therefore applies to the present case.¹

Former section 301(a)(7) of the Act stated, in pertinent part, 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 and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The applicant must therefore establish that her mother was physically present in the United States for 10 years prior to 1956, five of which were after the age of 14 (after 1939).

The record contains an affidavit executed by the applicant's mother stating that she spent weekends in the United States starting in 1926 until 1944. Her biographical information sheet states that she was born in Mexico in 1925 and resided there until 1960. Two of the applicant's mother's siblings were born in Mexico and two, in 1929 and 1930, respectively, were born in the United States. The applicant's parents were married in Mexico in 1944 and her older siblings were all born in Mexico starting in 1945. There is no other evidence in the record regarding the applicant's mother's physical presence in the United States prior to 1956.

In view of the applicant's mother's 1944 marriage in Mexico, as well as her siblings and older children's births in Mexico, the record does not establish that she was physically present in the United States for 10 years prior to 1956, five of which were after the age of 14. The AAO notes that the applicant's mother's affidavit stating that she spent the weekends in Brownsville is not corroborated by witnesses or documentary evidence, and does not contain probative details establishing her physical presence in the United States for the required period of time. Thus, the evidence in the record does not establish that the applicant's mother was physically present in the United States for 10 years prior to 1956, five of which were after the age of 14 (after 1939).

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet her burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.