

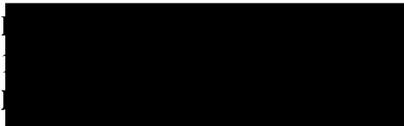
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



E2

DATE: MAY 12 2011

Office: TUCSON, AZ

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.

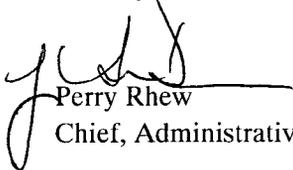
ON BEHALF OF APPLICANT:

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, Tucson, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on April 16, 1950 in Mexico. The applicant's father was born in Texas on July 29, 1915. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

The field office director found that the applicant had failed to establish that her father had the 10 years of residence in the United States, including five years after his sixteenth birthday, required by section 201(g) of the Nationality Act of 1940 (the Nationality Act). The application was accordingly denied.

On appeal, the applicant maintains that she has provided sufficient testimonial evidence in support of her claim that her father resided in the United States, and that documentary evidence is unavailable due to the passage of time and the nature of her father's employment. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by detailed notarized statements stating that the applicant's father resided in the United States as required.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 (9<sup>th</sup> Cir. 2001) (citations omitted). The applicant was born in 1950. 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 that her father resided in the United States for ten years prior to 1950, five of which were after 1931 (his sixteenth birthday). The record in this case includes, in relevant part, the applicant's birth certificate, the applicant's father's birth certificate, and detailed

notarized statements submitted on appeal. The record, however, does not contain a copy of the applicant's parents' marriage certificate such that it could be determined whether the applicant was born in or out of wedlock.

The matter is remanded to the director to request that the applicant provide a copy of her parents' marriage certificate. On remand, the director shall determine whether the applicant was born in wedlock<sup>1</sup> and shall also consider the additional notarized statements submitted on appeal. His decision of September 2, 2010 will be withdrawn and a new decision shall be entered upon consideration of the evidence submitted on appeal. If the applicant is found ineligible for citizenship, the director shall certify his decision to the AAO for review.

**ORDER:** The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

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<sup>1</sup> If it is determined that the applicant was born out of wedlock, the director shall consider the applicant's citizenship claim under the provision of the Nationality Act applicable to out of wedlock children.