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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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Date: MAY 11 2012

Office: LOS ANGELES, CA

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 205 of the Nationality Act of 1940

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant was born [REDACTED] in Mexico. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in California in 1962. The applicant's mother was born in California [REDACTED]. 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, in relevant part, that she had failed to establish that her mother was physically present in the United States for the statutorily required period of time.

On appeal, the applicant maintains that the evidence was not properly reviewed. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant submits additional evidence in support of her claim and maintains that she acquired U.S. citizenship through her mother at birth.

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 1944. The Immigration and Nationality Act was enacted in 1952. The Nationality Act of 1940 was in effect in 1944. Because the applicant was born prior to her parents' marriage, she is deemed to have been born out of wedlock. Section 205 of the Nationality Act therefore applies to her case.

Section 205 of the Nationality Act provided, in relevant part, that

[a] child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States . . . shall be held to have acquired at birth her nationality status.

Section 205 of the Nationality Act requires only that the applicant establish that her mother resided in the United States prior to her birth, in 1944. The record in this case contains the applicant's mother's school records indicating that she was enrolled in 1931 and 1932, and resided in Los Angeles, California. Thus, the applicant can establish that her mother resided in the United States prior to her birth in 1944. The applicant acquired U.S. citizenship at birth through her mother pursuant to section 205 of the Nationality Act.

The burden of proof is on the applicant to establish the claimed citizenship by a preponderance of the evidence. Here, the applicant has met her burden. Accordingly, her appeal will be sustained. The matter will be returned to the Los Angeles Field Office for issuance of a certificate of citizenship.

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