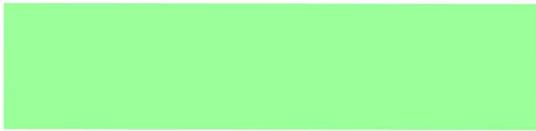


(b)(6)

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

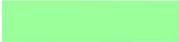


U.S. Citizenship
and Immigration
Services

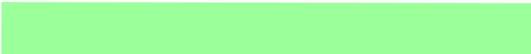


Date: SEP 04 2013

Office: HIALEAH, FL

FILE: 

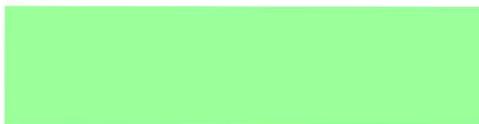
IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director (director), Hialeah, Florida, denied the application 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 on August 21, 1991 in Venezuela. The applicant's father, [REDACTED] was born on February 24, 1959 in [REDACTED] Louisiana. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were married in [REDACTED] on October 5, 1985. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)(1991).

The director denied the applicant's Application for Certificate of Citizenship (Form N-600). *See* Decision of the Field Office Director dated April 16, 2010. The director determined that the evidence in the record did not establish that the applicant's father was physically present in the United States for five years, at least two of which were after the age of 14, as required by section 301(g) of the act.

On appeal, the applicant, through counsel, maintains that her father was physically present as is statutorily required. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant notes the evidence submitted, including her father's birth certificate, business records, school records, and income tax returns.

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 1991. Section 301(g) of the Act therefore applies to the present case.

Section 301(g) of the Act states, 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 five years, at least two of which were after attaining the age of fourteen years

In order to acquire U.S. citizenship at birth under section 301(g) of the Act, the applicant must therefore establish that her father was physically present in the United States for five years prior to 1991, two of which were after his fourteenth birthday (after 1973).

The record contains, in relevant part, the applicant's father's birth certificate; the applicant's birth certificate; the applicant's parents' marriage certificate; university records indicating that the applicant's father attended school in Louisiana in 1979, 1980 and 1981; business records indicating

that the applicant's father was present in the United States in 1985 and 1986; income tax returns for the years 1986 through 1989; and receipts dated in 1990. The information in these documents is consistent and supports the applicant's claim that her father was present in the United States for at least five years prior to her birth in 1991, two of which after his fourteenth birthday in 1973.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that "where a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily." The record in this case establishes, by a preponderance of the evidence, that the applicant's father was physically present in the United States for five years prior to the applicant's birth, two of which were after 1973, as is required by section 301(g) of the Act. The applicant therefore acquired U.S. citizenship through her father at birth.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.