

(b)(6)

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



U.S. Citizenship
and Immigration
Services

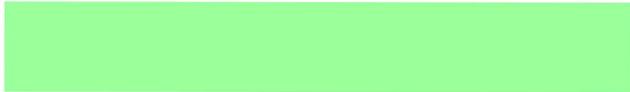


Date: DEC 18 2014

Office: HOUSTON, TX

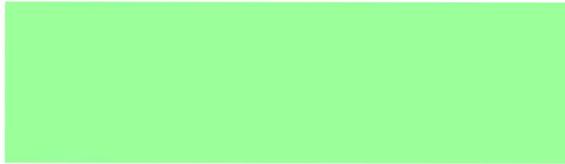
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 (1979)

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Houston, Texas Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born in Mexico on July [REDACTED] to married parents.¹ The applicant's father was born in Texas on July [REDACTED] and is a U.S. citizen. Her mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that she acquired U.S. citizenship at birth through her father.

The director determined that the applicant failed to establish, by a preponderance of the evidence, that her father satisfied U.S. physical presence requirements set forth in former section 301(g) of the Act. The application was denied accordingly. Through counsel, the applicant submits Social Security Administration earnings evidence on appeal, and she indicates that cumulative evidence in the record demonstrates that her father was physically present in the United States for the required period set forth in former section 301(g) of the Act.

We conduct appellate review on a *de novo* basis.

Applicable Law

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Here, the applicant was born in 1979. Former section 301(g) of the Act therefore controls her claim to U.S. citizenship.² Former section 301(g) of the Act provided, in pertinent, part that the following shall be citizens of the United States at birth:

¹ The record contains a Declaration and Registration of Informal Marriage certificate issued in [REDACTED] Texas recognizing the applicant's parents' informal marriage to one another as of June [REDACTED] prior to the applicant's birth. *See* Title 1, Chapter 2 of the Texas Family Code sections 2.401 – 2.404 (on legality of informal marriages in Texas.)

² Section 301(a)(7) of the Immigration and Nationality Act of 1952 (the 1952 Act) was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(g) of the Act remained the same as those under section 301(a)(7) of the 1952 Act and until 1986. Current section 301(g) of the Act applies to individuals born on or after November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). (1986 Act). *See* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

[A] person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c). The “preponderance of the evidence” standard requires that the record demonstrate that an applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r. 1989)).

Analysis

To establish that her father was physically present in the United States for 10 years prior to the applicant’s birth on July [REDACTED] at least five years of which were after her father turned 14 on July [REDACTED] the applicant submits her father’s U.S. birth certificate, reflecting that he was born in Texas on July 14, [REDACTED] and Social Security Administration earnings evidence reflecting his employment in the United States every year between 1968 and 1980. Upon review, we find that the applicant has established by a preponderance of the evidence that her father was physically present in the United States for 10 years prior to the applicant’s birth in July [REDACTED] at least five years of which were after he turned 14 in July [REDACTED]. Accordingly, the applicant has met her burden of establishing that she acquired U.S. citizenship through her father under former section 301(g) of the Act. The appeal will therefore be sustained.

Conclusion

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. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.