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

(b)(6)

Date: MAR 2 1 2014 Office: HOUSTON, TX

IN RE:

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1975).

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 Field Office Director, Houston, Texas (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO's decision. The motion will be granted, the AAO's August 6, 2013 decision will be withdrawn, and the appeal will be sustained.

Pertinent Facts and Procedural History

The applicant was born on July 1, 1975 in Mexico. The applicant's mother, was born in Mexico on January 31, 1946, and became a U.S. citizen upon her naturalization in 1988. The applicant claims that his mother had acquired U.S. citizenship at birth through her U.S. citizen parent, who was born in Texas on August 21, 1915. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1975).[1]

The director denied the Form N-600 and on appeal, the applicant, through counsel, maintained that he acquired U.S. citizenship at birth through his mother who, in turn, acquired U.S. citizenship at birth through her mother, the applicant's maternal grandmother. *See* Counsel's Statement Accompanying Form I-290B, Notice of Appeal or Motion. The AAO dismissed the applicant's appeal, finding that the applicant had failed to establish that his mother acquired U.S. citizenship at birth. *See* August 6, 2013 decision of the AAO.

The applicant, through counsel, seeks reconsideration of the AAO's decision, noting that the AAO erroneously considered that the applicant's mother was born in wedlock.

Analysis

The regulation, at 8 C.F.R. § 103.5(a)(3), provides that a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy." A motion to reopen must state the new facts to be provided and be supported by documentary evidence. *See* at 8 C.F.R. § 103.5(a)(2). The applicant's motion satisfies the requirements of a motion to reopen and reconsider, and will therefore be granted.

The issue before the AAO is whether the applicant's mother acquired U.S. citizenship at birth through her mother, the applicant's grandmother. The applicant's mother was born in Mexico on January 31, 1946. The applicant's maternal grandmother was born in Texas on August 21, 1915.

In evaluating the applicant's mother's claim to U.S. citizenship, the AAO relied upon section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C § 601(g), noting that the that

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[1] Former section 301(a)(7) of the 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's grandparents were married prior to the applicant's mother's birth, and that section 201(g) of the Nationality Act applies to citizenship claims of persons born in wedlock in 1946.[2]

The applicant's mother was born in 1946, prior to the applicant's grandparents' marriage in 1969. Therefore, it is appropriate to consider the applicant's mother's citizenship claim under section 205, and not section 201(g) of the Nationality Act.

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.

There is evidence in the record, including the applicant's grandmother's birth certificate and her son's 1930 birth index and death certificate, of the applicant's grandmother's physical presence in the United States prior to 1946. With the motion, the applicant submitted additional evidence of his grandmother's residence, including, in relevant part, sworn statements from his aunt and uncle declaring that the applicant's grandmother resided in Texas.

The applicant has established, by a preponderance of the evidence, that his grandmother resided in the United States prior to his mother's birth in 1946, and therefore transmitted U.S. citizenship to her at birth pursuant to section 205 of the Nationality Act. The subsequent marriage of the applicant's maternal grandparents did not divest the applicant's grandmother of her U.S. citizenship or retroactively impose the same prior residence and retention requirements that are imposed to child born abroad to one citizen and one noncitizen parent. *See Matter of M ---*, 4 I&N Dec. 440, 444 (BIA 1951); *Matter of Villaneueva*, 16 I&N Dec. 84, 86 (BIA 1976).

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has been met.

ORDER: The motion is granted. The August 6, 2013 decision of the AAO is withdrawn. The appeal is sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

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[2] Section 201(g) of the Nationality Act of 1940 states in pertinent part that:

> [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.