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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

[Redacted]

DATE: AUG 26 2015

[Redacted]

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Certificate of Citizenship under former section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Houston, Texas, denied the application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on [REDACTED]. Her father, [REDACTED], was born in the United States on [REDACTED] and her Mexico-born mother became a naturalized U.S. citizen on [REDACTED]. The applicant's parents married on [REDACTED] in Texas and were married at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that she acquired U.S. citizenship through her father.

The director found that the applicant failed to establish eligibility for a certificate of citizenship under former section 301(g) of the Act, 8 U.S.C. § 1401(g), in that that she did not show her father was physically present in the United States for ten years prior to the applicant's birth and therefore denied the application. *See Decision of the Director*, November 17, 2014. On appeal, the applicant has not provided a brief or additional evidence.

We conduct appellate review on a de novo basis. *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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in [REDACTED]. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.¹

The applicant must prove that her father met the physical presence requirements set forth in former section 301(a)(7) of the Act, which stated 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 . . . 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

The applicant must therefore establish that her father was physically present in the United States for ten years before her [REDACTED] birth, and that at least five of these years were after [REDACTED] her father's fourteenth birthday.

In support of the applicant's claim that her father resided in the United States from [REDACTED], the applicant submitted the 2012 affidavits of her father's first cousin and niece, as well as a 2012 statement from her father's brother. Other relevant documents submitted with the Form N-600 and

¹ Former section 301(a)(7) of the 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(a)(7) remained the same after the re-designation and until 1986.

in response to a request for further evidence include: her father's birth and baptismal certificates showing these events occurred in the United States during [REDACTED] and [REDACTED] respectively; her parents' [REDACTED] marriage license; her mother's naturalization certificate; both parents' death certificates; a U.S. census document showing that her father was nine years old and living in Texas as of [REDACTED] school records from Texas showing he was enrolled for an unspecified period from [REDACTED] and between [REDACTED] and [REDACTED] a county census roll for [REDACTED] listing his name and date of birth; and the applicant's birth certificate issued in Texas in [REDACTED] regarding her [REDACTED] birth in Mexico.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The applicant's claim has reasonable support and, although the supporting statements were executed by family members, they are consistent as to key facts, such as her father's birthplace, limited schooling, geography of employment as a migrant farm worker, and the circumstances of his daughter's birth in Mexico. The detailed statement of her father's elder brother confirms that the applicant's father was born in [REDACTED] Texas, and the brothers lived and worked as children picking cotton, citrus fruit, and vegetables in the area of [REDACTED] Texas. In addition, his assertion that the applicant's father left school after second grade is corroborated by school attendance documents and explains the lack of subsequent school records. The lack of employment records or social security information is also explained by the nature of the applicant's father's employment as a migrant farm worker.

The applicant's uncle indicates her father lived his entire life here, and census records show him present at both the beginning and end of the [REDACTED]. We note that a statement from the applicant's paternal aunt explains that, after the applicant's parents married in [REDACTED] immigration problems forced her mother to return to Mexico to give birth (to the applicant) in [REDACTED] but that she resumed living in Texas with the applicant's father when their young daughter was still an infant. Credible evidence establishes that the applicant's father was physically present in the United States for ten years before her birth and that five of those years were after he turned 14.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has been met.

ORDER: The appeal is sustained.