



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: San Antonio

Date: AUG 22 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

[REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 15, 1966 in Mexico. The applicant's father, [REDACTED] was born in Texas in August 1922. The applicant's mother, [REDACTED] was born in Mexico in 1933 and never had a claim to United States citizenship. The applicant's parents married each other on July 14, 1951. The applicant claims that she acquired United States citizenship at birth under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), at the time of the applicant's birth.

On appeal, counsel submits a copy of the Certificate of Citizenship of the applicant's brother, [REDACTED] who was born on December 22, 1959 and which was already present in the record. Counsel states that the applicant's brother filed a Form N-600 application in November 1997 and it was approved based on the same set of facts. Counsel asserts that the present application should also be approved.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act provides, in pertinent part, that 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 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

Section 12 of the Act of November 14, 1986, (Pub.L. 99-653, 100 Stat. 3657), shortened the required period of United States residence for the citizen parent amendments substituted "five years, at least two" for "ten years, at least five", effective for persons born on or after November 14, 1986.

The record indicates that the applicant's U.S. citizen father died in December 1988 prior to the filing of the present application in

January 2000 and her brother's application in November 1997. According to testimony in the present record by the applicant's mother, the entire family lived in Mexico from the date they were married until about 1976 and all the children were born while the family lived in Mexico. The father's school records and her mother's statement refute testimony by the applicant's uncle and aunt who alleged that they and the applicant's father were together in Texas since the applicant's father was born. The notarized statements from the applicant's aunt, [REDACTED] and uncle, [REDACTED] lack specificity, are unsupported by persuasive documentation and are completely contradicted by the statement of the applicant's mother.

Absent the necessary probative supportive evidence, the applicant has not shown that she acquired United States citizenship at birth because she has failed to establish that her father was physically present in the United States for the required period of time prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has not met this burden of establishing her father had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.