



U.S. Department of Justice

Immigration and Naturalization Service

DP

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



Public Conv

FILE:

Office: San Antonio

Date: JAN 24 2000

IN RE: Applicant:

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: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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.

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 December 2, 1954 in Ciudad Acuña, Coahuila, Mexico. The applicant's father, [REDACTED], was born in the United States in 1917. The applicant's mother, [REDACTED] was born in 1923 in Mexico and never had a claim to U.S. citizenship. The applicant's parents married each other on August 10, 1939. 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 Act at the time of the applicant's birth.

On appeal, the applicant disagrees with the decision and states that her two sisters and one brother were issued Certificates of Citizenship based on the same evidence.

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.

The district director submitted a supplemental report in which he discusses the evidence, including the Certificate of Citizenship of the applicant's sister [REDACTED] (D.O.B. May 9, 1963) issued on March 21, 1980, two letter of support dated 1977 and the father's baptismal and marriage certificates. The district director refers to the application on which the applicant's father is alleged to have resided in the United States from his birth in 1917 to 1920 and from 1939 until the present time. The applicant's mother is alleged to have remained in Mexico until 1980. The district director notes that, apart from the two letters dated November 1977, the record is devoid of any evidence that the applicant's father ever resided in the United States prior to the applicant's

birth. The applicant's father would have been obligated to register for the draft during World War II.

The district director asserts that the issue of Res Judicata, raised by the applicant who cited Juan Jaime Mendez vs. INS, 993 F.2d 499 (5th Cir. 1993), is not applicable in this matter as the present matter. In Medina vs. INS, the case involved the same parties and the same issues. Here, the case involves different parties.

Absent such 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 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 that 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.



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FILE: [Redacted] Office: Oakdale (NOL)

Date: JAN 18 2000

IN RE: Obligor:
Bonded Alien:



IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under § 103 of the Immigration and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBLIGOR: Self-represented

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.

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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.

Resolving GDI cases to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, New Orleans, Louisiana, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on January 29, 1998 the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 25, 1999 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (the Service) for removal at 1:30 p.m. on March 23, 1999 at 1010 E. Whatley Road, Oakdale, LA 71463. The obligor failed to present the alien and the alien failed to appear as required. On May 27, 1999, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the bonded alien departed from the United States on October 16, 1998 and submitted a copy of an airline ticket in support of that assertion.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by the Service for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. 103.6(e).

8 C.F.R. 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(Emphasis supplied.) The bond (Form I-352) provides in pertinent part that the obligor "agrees that any notice to him/her in connection with this bond may be accomplished by mail directed to

him/her at the above address." In this case, the Form I-352 listed [REDACTED] as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the Notice to [REDACTED] was sent to the obligor at [REDACTED] on February 25, 1999. This notice demanded that the obligor produce the bonded alien for removal on March 23, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on March 9, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

The Service has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. Matter of Don Donaldson's Key Bail Service, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. Matter of Peerless Insurance Company, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure. Whether together or separate, Forms I-94 and departure manifests submitted by a transportation line are insufficient verification of departure for bond cancellation purposes.

The Service will accept a document signed by an embassy official, consular officer, or Service officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The district director retains the discretion to accept other documents of voluntary departure. The original of such document[s] may be delivered [either] by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

The obligor asserts that the bonded alien departed from the United States on October 16, 1998 and he has submitted a copy of an airline ticket as proof that the alien has returned to Honduras. However, the obligor's assertion is unsupported by proper evidentiary documentation. Nor does the record contain a Notification of Departure-Bond Case (Form I-392) properly executed by a United States Embassy official, consular officer or immigration officer abroad and received through official channels indicating the bonded alien's departure from the United States prior to his surrender date.

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to a Service officer upon each and every request of such officer until removal proceedings are either

finally terminated or the alien is accepted by the Service for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the Service for hearings or removal. Such bonds are necessary in order for the Service to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited their or the surety's convenience. Matter of L-, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.