



U.S. Department of Justice

Immigration and Naturalization Service

DB

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

[Redacted]

DATE

MAY 24 2000

[Redacted]

Date:

IN RE: Applicant:

[Redacted]

APPLICATION:

[Redacted]

IN BEHALF OF APPLICANT:

[Redacted]

identifying and
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 Monterrey, Mexico, on September 2, 1951. The applicant's father, [REDACTED] was born in Mexico in 1923 and never had a claim to U. S. citizenship. The applicant's mother, [REDACTED], was born in Laredo, Texas in 1929. The applicant's parents married each other on April 5, 1945. The applicant was lawfully admitted for permanent residence on July 12, 1989. The applicant seeks a certificate of citizenship under § 201(g) of the Nationality Act of 1940 (NA 1940).

The district director determined the record failed to establish that the applicant's United States citizen parent had resided in the United States or its outlying possessions for a period of 10 years, at least 5 of which were after the age of 16 years. The district director then denied the application accordingly.

On appeal, the applicant submitted the same documentation already reviewed by the district director.

The citizenship of a person born outside the United States is determined by the statutes and law in existence at the time of the person's birth. Matter of B--, 5 I&N Dec. 291 (BIA 1953), overruled on other grounds; Matter of M--, 7 I&N Dec. 646 (BIA 1958); Montana v. Kennedy, 278 F.2d 68 (7th Cir. 1960), aff'd, 366 U.S. 308 (1961). Section 201(g) of NA 1940 was in effect at the time of the applicant's birth.

Section 201 of NA 1940 states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside 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 10 years' residence in the United States or one of its outlying possessions, at least 5 of which were after attaining the age of 16 years, the other one being an alien. If the citizen parent was in the U.S. military service between December 7, 1941, and December 31, 1946, then the U.S. citizen parent must have resided in the United States or in an outlying possession for 10 years, at least 5 of which were after the age of 12; or if the citizen parent was in the U.S. military service between January 1, 1947, and December 24, 1952, then the U.S. citizen parent must have resided in the United States or in an outlying possession for 10 years, at least 5 of which were after the age of 14.

The applicant submitted her mother's birth and baptismal certificates showing that her mother was in the United States in

June 1929. She also submitted a copy of a 1920 census record showing that her grandfather's family was in the United States in 1920. The record reflects that her grandfather was born in Mexico and was not a U.S. citizen. The applicant indicates on the application that her mother is now living in Monterrey, Mexico, but resided in the United States from her birth in 1929 until 1945. The record is devoid of evidence or any statement from the applicant's mother to support that assertion. Further, there is no evidence in the record to show that the applicant has ever sought to obtain a U.S. passport from an American Consulate in Mexico.

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.

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 mother resided in the United States for the required period prior to the applicant's birth.

Persons born prior to October 10, 1952, are subject to complying with the two-year retention requirements in effect at the time of their birth. However, since the applicant has not met the burden of establishing that her mother satisfied the residence requirement, no purpose would be served in addressing the retention requirements in effect at that time. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.