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U.S. Department of Justice
Immigration and Naturalization Service

Public Copy

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



FILE 

Office: San Antonio

Date:

MAR 17 2001

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

Identification 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion 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 U.S. 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 and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, the applicant states that her brother, [REDACTED] was issued a certificate of citizenship on June 30, 1999 based on the same documentation that she submitted. The applicant advanced that same argument on appeal. A review of that Service file does not indicate that the interviewing officer made any specific inquiries to determine the accuracy of the statements regarding whether the applicant's father had sufficient physical presence in the United States to transmit citizenship to his children. Case law holds that the Service is not bound by errors by its employees unless affirmative misconduct can be established.

On motion, the applicant states that neither she nor her mother has any idea what is meant in the "DISCUSSION" portion of the Associate Commissioner's decision dated August 22, 2000. It is noted that the applicant was represented by counsel when the appeal was filed on July 6, 2000. A copy of that decision was forwarded to counsel of record for review.

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 in effect prior to November 14, 1986 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 Associate Commissioner discussed the testimony given by the applicant's mother in which she stated that the entire family lived in Mexico from the date she and the applicant's father were married until about 1976. Further, the school records of the applicant's father and the statement by the applicant's mother refute testimony given 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.

██████████ and ██████████ stated on May 17, 1999 that ██████████ was her brother, that they worked together at different ranches as laborers and that they were together in Texas since ██████████ was born.

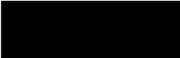
On the application for certificate of citizenship of the applicant's brother, ██████████ indicated that his father, ██████████ lived in the United States from 1922 to 1933 and between 1934 and 1976 ██████████ worked back and forth between the United States and Mexico. The actual time that the applicant's father spent in the United States between 1934 and the applicant's birth in November 1966 is unstipulated and unclarified in that record.

The record contains a certification from the Municipio de San Juan de Sabinas, Coahuila, which states that the applicant's father was a resident of the city of Nueva Rosita, Coahuila, from 1933 to 1955. The record also contains a school record indicating that the applicant's father attended school in Moncalvo, Coahuila, from 1932 to 1933. The certification and the school record contradict the statements of ██████████ brother and sister that ██████████ was together with them in Texas since he was born.

The record also contains a statement from the applicant's mother signed under oath on May 10, 2000, and witnessed by the applicant, in which the applicant's mother states the following: She met the applicant's father when she was 17 and he was about 27 (approximately 1949). He was working in a mine in Rancherías, Mexico. After they married in July 1951, they lived in Nueva Rosita, Coahuila, for 5 years and he continued to work in the mine. Then they moved to El Cloete, Coahuila, at Barrio Dos and lived there for 25 years. The applicant's father worked at the mine for 25 years or until 1976 or 1977 when he started going to the United States to work. This sworn statement given by the applicant's mother, ██████████ and witnessed by the applicant, completely refutes any statements given by the aunt and uncle which also completely lack specificity.

The applicant's assertions on motion that her father was a "migrant worker" in the United States and that somehow her own mother said that the entire family lived in Mexico from the date they were married until about 1976 are completely contradicted by other evidence in the record.

There is no probative evidence in the record to establish that the applicant's father accumulated at least five years of physical presence in the United States between August 1936 (when he became 14 years old) and November 1966 when the applicant was born.



8 C.F.R. 103.5(a)(2) provides that a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. 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.

8 C.F.R. 103.5(a)(4) provides that a motion which does not meet applicable requirements shall be dismissed. 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 mother had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.