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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: MAR 12 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 201(g) of the Nationality Act of 1940; 54 Stat. 1138.

ON BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on August 13, 1952, in San Miguel, Tamaulipas, Mexico. The record indicates that the applicant's mother, was born in San Benito, Texas, on August 6, 1930, and is a U.S. citizen. The applicant's father, was born in San Miguel, Tamaulipas, Mexico on October 7, 1929. He is not a U.S. citizen. The applicant's parents married on February 23, 1949, in San Miguel, Tamaulipas, Mexico. The record indicates that the applicant was admitted to the United States in November 1955. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the NA); 54 Stat. 1138, based on his claim that he acquired U.S. citizenship at birth through his mother.[1]

The district director determined that, based on the record, the applicant failed to establish that his United States citizen mother resided in the United States or its outlying possessions for a period of 10 years prior to his birth, at least 5 of which were after his mother reached the age of 16. In support of his decision, the district director stated:

> In order to be granted a certificate of citizenship, you must furnish proof to the satisfaction [of] the Attorney General that your alleged citizenship was acquired as claimed. . . . Your application failed to offer proof that your mother had been physically present in the United States for ten years prior to your birth. The evidence you have submitted shows your mother was physically present in the United States from 1941 to 1942 and 1944 to 1947, a total of 4 years, only one year of which was after the age of 16.

See District Director Decision, dated September 15, 1997.

On appeal, the applicant, through counsel, asserts that he submitted evidence proving the applicant's U.S. citizen

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[1] It was noted that, in making his decision, the district director referred to section 301(a)(7) of the Immigration and Nationality Act of 1952; 8 U.S.C. § 1401(a)(7) derivative citizenship requirements. The applicant was born prior to December 24, 1952 (the effective date of the Immigration and Nationality Act of 1952). He must therefore meet the derivative citizenship requirements for persons born abroad, as set forth in section 201(g) of the Nationality Act of 1940. The district director's decision correctly analyzes the section 201(g) requirements in its decision. Therefore, the error is harmless and the decision remains legally correct.

mother met the residency requirements set forth in section 201(g) of the NA and that the Immigration and Naturalization Service (now known as the Bureau) abused its discretion by not addressing the evidentiary weight of the applicant's mother's and maternal uncle's sworn affidavits and testimony in its decision. Counsel asserts further that "the record shows internal, consistent and clear testimony of the residency of the United States citizen parent" and that "absent any discrepancies in the record, a claim of derivative citizenship that has reasonable support should not be rejected." *See Applicant's Brief in Support of Appeal* at 2-4. On appeal, counsel submits two polygraph test results from the applicant's mother and maternal uncle to further support his claim that the applicant's mother met the residency requirements set forth in section 201(g) of the NA.

"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. Immigration and Naturalization Service,* 247 F.3d 1026,1029 (9th Cir., 2000) (citations omitted). In order for a child born outside of the United States to derive citizenship from one U.S. citizen parent pursuant to section 201(g) of the NA, it must be established that, when the child was born, the U.S. citizen parent resided in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 16. *See § 201(g) of the NA.* In addition, the child must establish that she or he had continuous physical presence in the United States or its outlying possessions for 5 years between the ages of 14 and 28, if begun before October 27, 1972, or had 2 years continuous presence in the United States between the ages of 14 and 28. *Id.* In this case, the applicant has not met his burden of proof of establishing that his U.S. citizen mother resided in the United States for 10 years, at least 5 of which were after the age of 16.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted).

> [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." *Tijerina-Villareal* at 331 (citations omitted.)

The record contains copies of school records indicating that the applicant's mother attended school in the United States from 1941 to 1942 and from 1944 to 1947. The record further contains sworn declarations from the applicant's' father and the applicant's maternal uncle

The declaration of states that he lived with in Texas until 1948, and that visited Mexico in 1949 and married The declaration states further that "following their marriage I did not remain in close contact with my sister, however to the best of my recollection they never resided in Mexico at any time." *See Personal Declaration of Gorena,* dated November 11, 1996. declaration provides insufficient details to establish that the applicant's mother satisfied the residence requirements set forth in section 201(g) of the NA. The declaration lacks detail regarding specific dates or places where lived. Moreover, indicates that after 1949, he had little contact

The declaration of is dated August 31, 1955, and states that he resided with his wife and three children in Los Ebanos, Texas. The declaration additionally states that the children were all born in Mexico and that the children "have been with us since they were born." *See Personal Declaration of* dated August 31, 1955. declaration lacks details or precise dates and addresses where he lived with his family in Texas. Moreover, the declaration contains no supportive evidence to support the claim that resided in the United States for the required period of time.

The record contains three declarations from The first, dated August 31, 1955, states that she was married in Mexico in February 1949 and that her three children were born in Mexico. The declaration states further that has cared for her children since they were born and that they are still under her care and guidance. *See Personal Declaration of* dated August 31, 1955. The declaration does not discuss where Lydia Garza lived or whether she lived with her husband.

A second declaration, dated November 14, 1996, states that resided in Brownsville, Texas between 1944 and 1947, and that she did migrant farm work throughout Texas after that. states further that she met her husband in Mexico in 1949 and that after their marriage she moved to Hidalgo County, Texas with her husband. states that she returned to Mexico in 1951, in August 1952 and in 1954 in order to give birth to her children. She indicates that she and her family resided in the United States after 1949 but that she returned to Mexico

periodically for short trips, to seek medical attention and to visit family members. *See Personal Declaration of Lydia Garza,* dated November 14, 1996. No other details are provided regarding addresses in the United States, specific dates of departures to Mexico, or specific dates of residence in the United States. Moreover, no evidence was provided to support the claim that [redacted] resided in the United States for the requisite time period as set forth in section 201(g) of the NA. A third declaration, dated August 8, 1997 corrects errors made in the 1996 declaration.

Because they lack detail and corroborative evidence, the declarations submitted fail to establish that [redacted] resided in the U.S. for 10 years, at least 5 of which were after the age of 16 years old. In addition, the polygraph test results submitted by counsel are not found to be probative. The test results add no new pertinent information to the record. Moreover, the value of polygraph testing is questionable and controversial. The Ninth Circuit Court of Appeals has a long history of "hostility to the admission of unstipulated polygraph evidence" and the Bureau has had no opportunity to meaningfully assess the scientific knowledge or expertise of the proposed polygraph expert. *See United States v. Cordoba,* 104 F.3d 225, 227 (9th Cir. 1997).

No other evidence is contained in the record to support the claim that [redacted] resided in the U.S. for the requisite number of years as set forth in section 201(g) of the NA. To the contrary, the record contains evidence that contradicts the assertion that Lydia Garza resided in the U.S. prior to and after 1949.

A November 12, 1953 application for certificate of citizenship (1953 citizenship application) that was filed for the applicant indicates that [redacted] resided in the United States from 1930 to 1949. *See 1953 Citizenship Application.* Moreover, the record reflects that the 1953 application for citizenship was withdrawn because [redacted] "was 18 years of age when she departed to Mexico and did not have the required residence in the U.S. to pass on citizenship to [her] child." *Id.* The record further indicates that the applicant himself testified during 1974 immigration court deportation proceedings, that his mother "departed from the United States to Mexico when she was 18 years of age. She was married on February 23, 1949, in Mexico. Respondent testified that he lived with his family in Mexico from his birth until he immigrated to the United States in 1955." *See April 24, 1974, Oral Decision of the Immigration Judge* at 2. As mentioned by [redacted] herself, all of her children were born in San Miguel, Tamaulipas, Mexico between 1951 and 1954. Moreover, the marriage certificate of [redacted] indicates that [redacted] resided in San Miguel,

 [redacted]

Tamaulipas, Mexico when she married.

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. Given the material discrepancies in the record and the absence of supportive evidence to establish that [redacted] resided in the United States for the requisite period of time, the applicant has not met the burden of establishing his mother resided in the United States a total of 10 years, 5 of which were after the age of 16. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.