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Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

FILE

Office: Harlingen, Texas

Date: JUN 10 2003

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1970).

ON BEHALF OF APPLICANT:

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. Wieman, Director  
Administrative Appeals Office

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

The applicant was born on May 18, 1970, in [REDACTED], Tamaulipas, Mexico. The record indicates that the applicant's father, [REDACTED] (Mr. [REDACTED] was born in Beeville, Texas on August 11, 1911, and that he was a United States (U.S.) citizen. Mr. [REDACTED] died on October 28, 1986, in Hidalgo, Texas. The applicant's mother, [REDACTED] was born in Tamaulipas, Mexico and is not a U.S. citizen. The applicant's parents were not married. The record indicates that the applicant entered the United States without inspection through Hidalgo, Texas in December 1988. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that she acquired U.S. citizenship at birth through her father.

The district director determined that the applicant had failed to establish that she was legitimated by her father prior to her 18<sup>th</sup> birthday. The application was denied accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services, "BCIS") erred in not accepting as proof of legitimation, the certification from the civil registry of the State of Tamaulipas, Mexico, dated, February 12, 1979, indicating that Mr. [REDACTED] appeared personally and acknowledged paternity.

The AAO has reviewed the applicant's February 12, 1979, certification from the civil registry of the State of Tamaulipas, Mexico, acknowledging that Mr. [REDACTED] is the applicant's father. The AAO is satisfied that, with the submission of this evidence, the applicant has satisfied her burden of establishing that her U.S. citizen father legitimated her prior to her 18<sup>th</sup> birthday. A discussion of whether the applicant's father met the physical presence requirements as required by section 301 of the Act, follows.

"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). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. See *Murphy v. INS*, 54 F.3d 605 (9<sup>th</sup> Cir. 1995).

"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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant was born in Mexico in 1970, so the version of section 301 of the Act that was in effect at that time (section 301(a)(7)) controls her claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 14. See § 301(a)(7) of the former Act.

The definition of "physical presence" was addressed by the Board of Immigration Appeals (BIA) in *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962). The BIA determined that the term "physical presence" meant "continuous physical presence" in the United States.

In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that Mr. [REDACTED] was physically present in the U.S. for ten years between August 11, 1911 and May 18, 1970, and that five of those years were after March 11, 1925. The evidence in the record pertaining to Mr. [REDACTED] physical presence in the United States prior to May 18, 1970, consists of the following documents:

1) Evidence of birth records for the following children born in the United States to Mr. Rosa and his wife:

[REDACTED] - May, 10, 1942  
 [REDACTED] - October 9, 1943  
 [REDACTED] November 5, 1944  
 [REDACTED] - July 18, 1950

2) FICA (Federal Insurance Contributions Act) contribution statements for the following years:

1956 -\$119.25  
 1968 - \$3251.00  
 1969 - \$3028.00  
 1970 - \$1359.00

3) Affidavit written by Mr. [REDACTED] brother, Policarpo Rosa, stating that he knew Mr. [REDACTED] all of his life, that Mr. [REDACTED] had a wife and six children in the U.S. and that he had four children resulting from a relationship in Mexico. Mr. [REDACTED] brother stated further that Mr. [REDACTED] resided in the U.S. for his entire life and that he maintained his relationship in Mexico through weekend visits.

4) Affidavit from neighbor, [REDACTED] stating that he met Mr. [REDACTED] in 1946, and that the two worked together in the fields and lived near each other. The affidavit further indicates that Mr. Rosa had a wife and family in the U.S., and that subsequent to Mr. [REDACTED] separation from his wife, he spent weekends in Mexico with [REDACTED] and had four children with her.

The evidence submitted fails to establish that Mr. [REDACTED] was physically present in the United States for the time period required by section 301(a)(7) of the former Act.

The evidence of birth for four of Mr. [REDACTED] U.S. citizen children, does not, in and of itself, establish that Mr. [REDACTED] resided in the United States during those years. In addition, the contribution statements submitted by the applicant for 1956 and 1968-1970, fail to establish the dates that Mr. [REDACTED] worked during those years, who he worked for, or that he actually lived in the United States.

Moreover, the affidavits submitted are not found to be probative of Mr. [REDACTED] physical presence in the United States. The affidavits contain no corroborative evidence or information to substantiate their claims and they lack basic and material details about the dates and locations that Mr. [REDACTED] worked and lived in the United States.

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. See also § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. Given the absence of evidence in the record to support the claim that Mr. [REDACTED] was physically present in the United States for the requisite time period, the applicant has not met the burden of establishing that her father was physically present in the United States a total of ten years, five of which were after the age of 14. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.