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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: YAKIMA, WA

Date: MAR 07 2008

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 205 of the Nationality Act of 1940; 8 U.S.C. § 605.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Yakima, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The record reflects that the applicant was born in Mexico on May 27, 1952. The applicant's mother, [REDACTED], was born in Mexico on February 2, 1927. [REDACTED] acquired U.S. citizenship at birth through her U.S. citizen mother, [REDACTED]. The applicant's father was born in Mexico, and he is not a U.S. citizen. The applicant's parents did not marry. The applicant presently seeks a certificate of citizenship pursuant to section 205 of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 605, based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director determined the applicant had failed to establish that his mother was physically present in the United States for the requisite time period set forth in the Immigration and Nationality Act. The applicant's Form N-600, Application for Certificate of Citizenship (N-600 application) was denied accordingly.

On appeal the applicant indicates in pertinent part that while growing up, his mother spent time at two family homes (in Arivaca, Arizona and in Saric, Mexico.) The applicant submits a map showing the two towns, and he indicates that the towns are only two hours apart, and that it used to be easy to cross the U.S./Mexico border. The applicant additionally submits a notarized statement from his mother stating that she stayed with her mother at her maternal grandmother's home in Arivaca, Arizona for a large part of her life.

"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 the present matter the applicant was born on May 27, 1952, to a U.S. citizen mother. If the applicant was born in wedlock to married parents, section 201(g) of the Nationality Act, 8 U.S.C. § 201(g) would be applicable to his acquisition of U.S. citizenship claim. If the applicant was born out of wedlock, the provisions contained in section 205 of the Nationality Act; 8 U.S.C. § 605, would apply to his claim.

The field office director assessed the applicant's U.S. citizenship claim pursuant to provisions contained in section 201(g) of the Nationality Act, which accords citizenship to:

A person born outside of 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 ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years.¹

In the present matter, however, the applicant states that his parents were unmarried when he was born. The AAO notes that the applicant's birth certificate reflects that his mother was single at the time of the applicant's birth. The record additionally contains an August 10, 2007, notarized statement by the applicant's mother stating that she was not married to the applicant's father, and that she never married.

¹ It is noted that the field office director erroneously cited to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), rather than to section 201(g) of the Nationality Act.

Section 205 of the Nationality Act states in pertinent that:

The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out-of-wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

The AAO finds that the evidence in the record establishes by a preponderance of the evidence that the applicant was born out of wedlock to a U.S. citizen mother. The evidence establishes further that the applicant's mother never married. Furthermore, Article 130 of the Mexican Constitution provides that a child born out of wedlock in Mexico becomes legitimated only upon the civil marriage of his or her parents. *Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949.)

Section 104 of the Nationality Act, 8 U.S.C. § 504, provides that for section 201 of the Nationality Act purposes, the place of general abode shall be deemed to be the place of residence. However, the definition of residence contained in section 104 of the Nationality Act was not extended to section 205 of the Nationality Act. Prior to the enactment of section 104 of the Nationality Act, the definition of residence was not defined, and a brief visit to the U.S. satisfied residence requirements. In the present matter, in order to satisfy section 205 residence requirements, the applicant need only establish that his mother was in the United States briefly at some point prior to his birth. *See Matter of E*, 9 I&N Dec. 479 (Comm. 1961) (holding that a two day visit to the U.S. satisfied section 205 of the Nationality Act residence requirements.)

The record contains the following evidence relating to [REDACTED]'s residence in the United States prior to the applicant's birth:

An August 10, 2007, notarized statement signed by [REDACTED] reflecting that she and her mother lived between Saric, Mexico, and Arivaca, Arizona, and stating that she lived the most part of her life at her maternal grandmother's ranch in Arivaca, Arizona.

A 1910 U.S. Census report containing the applicant's maternal grandmother's name reflecting that she and her siblings and parents lived in Arizona in 1910.

[REDACTED]'s Mexican birth certificate stating that her mother, [REDACTED] was a native of Arivaca, Arizona and of Saric, Sonora, Mexico.

A July 25, 2002, notarized Affidavit of Physical Presence signed by [REDACTED]'s mother, stating that she was physically present in the United States between 1903 to 1923, that she married in 1923, and that she was physically present outside the United States from 1923 to 1950.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establishes that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

The AAO finds, upon review of the evidence, that it is probably true that the applicant's mother traveled and lived between family homes in Saric, Mexico and Arivaca, Arizona prior to the applicant's birth in May 1952. Accordingly, the AAO finds that the applicant has established by a preponderance of the evidence that his U.S. citizen mother satisfied the residence requirements set forth in section 205 of the Nationality Act. The applicant has thus established that he acquired U.S. citizenship at birth. The appeal will therefore be sustained and the application will be approved.

ORDER: The appeal is sustained. The application is approved.