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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted]

Office: New York

Date:

JUL 12 2001

IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The district director's decision will be withdrawn, and the matter will be remanded for further action.

The record reflects that the applicant was born on November 17, 1938, in Italy. The applicant's father, [REDACTED] was born in Italy in 1901 and never claimed to be a United States citizen. The applicant's mother, [REDACTED] was born in 1909 in Italy and became a naturalized citizen of the United States in October 1902 under the name of [REDACTED]. The applicant's parents married each other on June 1, 1925. The applicant was admitted to the United States on July 20, 1953, at the age of 14 years and 7 months on his mother's U.S citizen passport.

The applicant claims that he acquired United States citizenship at birth under section 1993 of the Revised Statutes of 1874 (R.S. section 1993). R.S. section 1993 was declared unconstitutional in Wauchope v. United States Dept. of State, 985 F.2d 1407, 1414 n.3 (9th Cir. 1993).

However, former R.S. section 1993 as it was amended by the Act of May 24, 1934 (48 Stat. 797) provided, in part, that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

The director denied the application pursuant to 8 C.F.R. 103.2(b)(13) [abandonment] for failure of the applicant to submit the requested documentation.

On appeal, the applicant submits additional documentation including a copy of a U.S passport issued to him in 1972 valid for 5 years and a U.S. passport issued to him in 1993 valid for 10 years.

The record contains a naturalization certificate for [REDACTED] indicating that he was naturalized on October 21, 1902. Although the birth certificate of the applicant's mother fails to contain the names of her parents, it is presumed that [REDACTED] is her father who married [REDACTED] on May 1, 1904. Therefore, the applicant's mother became a United States citizen at birth in 1909 under R.S. section 1993. The application also refers to the 1913 passport of [REDACTED] and his wife and three minor children. A copy of that document is not present in the record. If that document exists, it would place the applicant's mother in the United States, and she would then have satisfied the

requirement of having resided in the United States prior to the applicant's birth.

8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5.

In Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (BIA) held that unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings, but constitutes conclusive proof of such person's United States citizenship. The applicant has been issued a United States passport by the Department of State which has not been shown to be void on its face.

The applicant has already submitted some of the requested evidence for the record. Therefore, the matter will be remanded to the district director to reopen the matter on a Service motion, to request or to receive additional evidence and to adjudicate the application supported by all of the documentation.

**ORDER:** The appeal is rejected. The matter is remanded to the district director for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.