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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

[Redacted]

FILE# [Redacted] Office: Providence (BOS)

Date:

JUL 23 2001

IN RE: Applicant:

[Redacted]

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:

[Redacted]

Public Copy

Identifying information is redacted 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, Boston, Massachusetts, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 16, 1973, in the Dominican Republic. The applicant's father, [REDACTED] was allegedly born in Puerto Rico in September 1935. The applicant's mother, [REDACTED] was born in February 1943 in the Dominican Republic. The applicant's mother never had a claim to United States citizenship. The applicant's parents married each other on June 12, 1970. The applicant's mother divorced [REDACTED] and married [REDACTED] in May 1974. The applicant claims that he acquired United States citizenship at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined the record failed to contain evidence that the applicant's father was born in the United States or to establish that the applicant had a United States citizen parent who 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 section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g), at the time of the applicant's birth.

On appeal, counsel states that the Service has/had in its possession the birth certificate of [REDACTED] because the applicant and his mother were both granted permanent residence through [REDACTED] born in Puerto Rico as father and husband respectfully. Counsel states that a Service officer approved a petition in October 1970 based on [REDACTED]'s birth in the United States and thus the only one conclusion that can be drawn is the fact that the father [REDACTED], is a citizen of the United States.

On appeal, counsel states that the two affidavits submitted by the applicant and live witness attesting to the father's residence in the United States for 10 years clearly meets the burden of proof assuming the witness was credible, since the Service never questioned her credibility.

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.

8 C.F.R. 204.1(f), states, in part, that:

(1) Documentary evidence consists of those documents which establish the United States citizenship or lawful permanent resident status of the petitioner and the claimed relationship of the petitioner to the beneficiary. They must be in the form of primary evidence, if available. When it is established that primary evidence is not available, secondary evidence may be accepted.

In the present matter it has not been established that primary evidence is not available.

Although the above regulation pertains to a visa petition proceeding, the principle is the same. The party filing the petition or application must provide primary evidence in support of that petition or application unless it is established that such primary evidence is not available. 8 C.F.R 301.1(a) also states that the Form N-600 application must be accompanied by supporting documentary and other evidence essential to establish the claimed citizenship, such as birth, marriage, death and divorce certificates.

The present record fails to contain primary evidence in the form of a birth certificate of the applicant's father, [REDACTED], allegedly born on September 12, 1935, in Bayamon, Puerto Rico, or that such birth certificate is not available.

Affidavits in the record assert that the applicant's father lived in New York from 1968 or 1969 to 1980. These assertions are unsupported in the record, they do not establish the father's place of birth and his whereabouts today is unknown.

Absent such supportive evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his father was born in the United States or an outlying possession or that his father was physically present in the United States for the required period prior to the applicant's birth.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.