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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



Public Copy

FILE: 

Office: New York

Date:

IN RE: Applicant: 

JUN 18 2001

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:



identification data needed to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

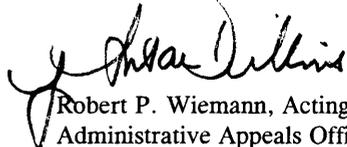
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The district director's decision will be withdrawn, and the application will be approved.

The applicant was born on April 26, 1976, in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic December 1932, and became a naturalized U.S. citizen in March 1973. The applicant's mother, Herenia de Castro Beras, was born in March 1932 in the Dominican Republic. The applicant's mother never had a claim to United States citizenship. The applicant's parents married each other on December 4, 1965. 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 establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions as a U.S. citizen for 10 years, at least 5 of which were after age 14.

On appeal, counsel states that the plain language of the statute only requires physical presence for the specified period of time and does not require that this period be as a U.S. citizen. Counsel states that the applicant's father became a lawful permanent resident on March 13, 1966, at the age of 33. Starting from that date until the applicant's birth on April 26, 1976, the applicant's father continuously resided in the United States during this entire period of time. During that time his physical presence was disrupted only by brief periods for vacation purposes.

[REDACTED] 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.

The record establishes that the applicant's father had been physically present in the United States for more than 10 years prior to the applicant's birth, part of that time as a lawful

permanent resident and part of that time as a naturalized U.S. citizen.

INTERP 301.1(b)(1)(i) states, in part, that while the prerequisites of the various statutes differ, common to all are the requirements that the parents through whom citizenship descends must be United States citizens at the time the child is born and must have resided in the United States prior to the child's birth in citizen or alien status. (Emphasis supplied.)

The applicant was issued a U.S. passport on June 10, 1988, valid for five years and issued a second U.S. passport on April 4, 1994, valid for five years. He entered the United States on July 2, 1990, and on April 18, 1995, with a U.S. passport.

The applicant has established that he acquired United States citizenship at birth because as his father was physically present in the United States for the required period of time 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 met this burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.