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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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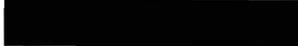


FILE: 

Office: Honolulu

Date:

MAY 7 2001

IN RE: Applicant: 

APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted 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, Honolulu, Hawaii, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in the Philippines on September 22, 1965. The applicant's father is unknown. The applicant's mother, [REDACTED] was born in the Philippines in 1947 and acquired U.S. citizenship at birth through her father. The applicant was lawfully admitted for permanent residence on December 16, 1981, and seeks a certificate of citizenship under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined the applicant had failed to establish he acquired U.S. citizenship at birth because his mother had failed to satisfy the one-year physical presence requirement at the time of the applicant's birth. The district director denied the application accordingly.

On appeal, the counsel states that the applicant's mother was a U.S. citizen at the time of the applicant's birth; therefore, the applicant acquired his mother's nationality at birth.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old § 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act. The applicant was 21 years old on November 14, 1986.

The text of "old § 309(a) of the Act" is as follows:

A person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The applicant's mother was born in the Philippines in May 1947 and acquired U.S. citizenship at birth. Since the applicant's mother was born after the Philippines gained its independence on July 4, 1946, she never had a claim to being a U.S. national as that term was defined under special legislation for Filipinos born prior to July 4, 1946, and her physical presence in the Philippines never counted as physical presence in an outlying possession.

8 C.F.R. 341.2 provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence.



The applicant in this matter has not met that burden. Although his mother was a United States citizen at the time of the applicant's birth, she was never physically present in the United States or one of its outlying possessions prior to his birth. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.