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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: SEP 17 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: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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, 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 February 1901 and never became a U.S. citizen. The applicant's mother, [REDACTED] was born in Italy in May 1909 and acquired U.S. citizenship at birth through her father, [REDACTED] who became a U.S. citizen on October 21, 1902. The applicant's parents married each other in June 1925. The applicant was initially admitted to the United States as a U.S. citizen on July 20, 1953. He seeks a certificate of United States citizenship under section 1993 of the Revised Statutes (R.S. section 1993), which incorporated the Act of Feb. 10, 1855 (10 Stat. 604).

The district director denied the application due to abandonment because the applicant failed to submit the requested documentation relating to his parent's marriage and proof of his mother's residence in the United States.

On appeal, the applicant requested additional time in which to submit the requested documentation.

Although R.S. section 1993 has been repealed, the law in effect on the date of the applicant's birth governs acquisition of citizenship. See Matter of Sepulveda, 14 I&N Dec. 616 (BIA 1974). At the time of the applicant's birth, November 1938, acquisition of United States citizenship by children born abroad was governed by R.S. section 1993. Montana v. Kennedy, 366 U.S. 308 (1961); Rogers v. Belli, 401 U.S. 815 (1971).

R.S. section 1993 was amended by the Act of May 24, 1934 (48 Stat. 797) which 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. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, or (in the applicant's case following former section 301(b), (d)), the child is continuously physically present for five years between ages 14 and 28 if begun before October 27, 1972.

It is noted that the applicant was issued a United States passport On October 3, 1972, and valid until October 2, 1977. He was also issued a United States passport on December 28, 1993, and valid until December 27, 2003.

It was held in Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), 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.

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. 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.

There is no appeal of the district director's decision in the present matter. However, the record clearly reflects that the applicant has been issued a United States passport based on the provisions of R.S. section 1993 and valid for 10 years. Pursuant to 22 U.S.C. 2705, such document is given the same weight as a certificate of naturalization or citizenship. Such a certificate can only be revoked through court proceedings. The Attorney General in 41 Op. Att'y Gen. 452 (1960), has given the same weight to a valid U.S. passport.

Therefore, the appeal will be rejected, and the matter will be remanded to the district director to either find the applicant's U.S. passport void on its face or to issue the applicant a certificate of citizenship pursuant to the finding in Matter of Villanueva, supra.

**ORDER:** The appeal is rejected, and the matter is remanded for further action.