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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted]

Office: Los Angeles

Date: AUG 20 2002

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record reflects that the applicant was born on March 11, 1952, in the Philippines. The applicant's father, [REDACTED] was born in the Philippines in December 1915 and acquired U.S. citizenship at birth through his father (the applicant's grandfather). The applicant's mother, [REDACTED] was born in the Philippines in October 1930 and never became a U.S. citizen. The applicant's parents married each other on June 17, 1950. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (NA 1940), in effect from January 13, 1941, until December 23, 1952, based on her claim that she acquired U.S. citizenship at birth through her father.

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 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). The applicant is not subject to the provision of section 301(g) of the Act as she was born prior to December 24, 1952.

On appeal, the applicant states that her father satisfied the physical presence requirements by residing in the Philippines for more than 30 years following his birth in 1915. The applicant states that she and her siblings did not become aware of any claim to U.S. citizenship until October 4, 1978, when their mother went to the U.S. Embassy. The record reflects that the U.S. Embassy notified a family member on November 28, 1979, that the applicant was one of the siblings who was registered as a United States citizen.

Section 201 of NA 1940 states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) 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, resided in the United States its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of sixteen years...

INTERP. 301.1(b)(3) states, in pertinent part, that a child of a citizen, his other parent being an alien, born in the Philippine Islands during the 1940 statute's effective period, but on or after July 4, 1946, also acquired citizenship under section 201(g) NA 1940 if the citizen parent had completed the requisite period of

residence in those islands during the time that the United States exercised rights of sovereignty over them since they were within the definition of an outlying possession.

The retention requirements in effect at the time of the applicant's birth under section 201(g) and (h) of NA 1940, stipulated that a citizen child born abroad to one U.S. citizen and one alien parent, in order to retain United States citizenship, must demonstrate 5 years residence in the United States between ages 13 and 21. The Act of 1952 stipulated that such citizen born abroad must demonstrate 5 years of continuous physical presence in the United States between the ages of 13 and 28 in order to retain citizenship. The Act of October 27, 1972, extensively liberalized the retention requirements extending back to birth abroad after May 24, 1934, and reduced the period of continuous physical presence to 2 years. The retention requirements were eliminated by an amendment to the Act effective October 10, 1978. Persons born on or after October 10, 1952, are relieved of the necessity of complying with any retention requirements.

Since the applicant in this matter did not become aware that she might have a claim to U.S. citizenship in time to permit entry into the United States before the age of 28, she is not subject to such residence or physical presence requirements. See INTERP 349.1(c).

The record establishes that the applicant was issued a United States passport in March 1980 and valid for 5 years. She applied for a new U.S. passport on March 18, 1985. A copy of that document is not present in the record.

In Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), the Board 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.

22 U.S.C. 2705 provides that a passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States, shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction.

Since the district director has failed to establish that the applicant's United States passport is void on its face, the applicant has demonstrated that she is a United States citizen having acquired that status at birth through her father.

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.