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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data omitted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

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 April 19, 1964, 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 claims that she 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 for 10 years, at least 5 of which were after age 14, as required under section 301(g) of the Act, at the time of the applicant's birth.

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.

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.

INTERP. 301.1(b)(4)(v) states, in pertinent part, that physical presence in the Philippine Islands after April 10, 1899, and before July 4, 1946, is physical presence in an outlying possession of the United States for the purposes of section 301(a)(7) of the Act (recodified as 301(g)).

The record establishes that the applicant was issued a United States passport in March 1985 and valid for 10 years. She was issued another U.S. passport in May 1993 and valid until May 2003.

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.