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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: Miami

Date: AUG 27 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:

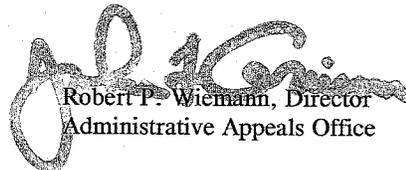
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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. Wichmann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, 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 January 5, 1975, in Honduras. The applicant's father, [REDACTED] was born in the United States in January 1917 and died in December 1985. The applicant's mother, [REDACTED] was born in Honduras in February 1951 and never had a claim to United States citizenship. The applicant's parents married each other on August 23, 1973. He indicates on his application that he arrived in the United States in 1991 as a "nonimmigrant" visitor. The record fails to contain that evidence. 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 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), at the time of the applicant's birth.

On appeal, the applicant submits the same Itemized Statement of Earnings from the Social Security Administration that he submitted with the application. The record also contains evidence that the applicant's father was listed in the Terre Haute, Indiana, City Directory from 1965 through 1975.

Montana v. Kennedy, 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 cumulative social security records indicate that the applicant's father worked the following times:

(Note: As the Social Security records are listed in quarterly amounts, these are estimates of the total time worked.)

- (1) 1 month in 1937 at the age of 20.
- (2) 1 month in 1940.

- (3) 5 months in 1941.
- (4) 5 months in 1942.
- (5) 5 months in 1943.
- (6) 5 months in 1944.
- (7) 11 months in 1945.
- (8) 10 months in 1946.
- (9) 8 months in 1947.
- (10) no earnings in 1948, 1949 or 1950.
- (11) 11 months in 1951.
- (12) 5 months in 1952.
- (13) 3 months in 1953.
- (14) 1 month in 1954.
- (15) no earnings in 1955.
- (16) 1 month in 1956.
- (17) no earnings in 1957 or 1958.
- (18) 11 months in 1959.
- (19) 6 months in 1960.
- (20) 5 months in 1961.
- (21) no earnings in 1962.
- (22) 3 months in 1963.
- (23) no earnings in 1964 or 1965.
- (24) 3 months in 1966 as self-employed.
- (25) 2 months in 1967 as self-employed.
- (26) 8 months in 1968.
- (27) 6 months in 1969.
- (28) 3 months in 1970.
- (29) 3 months in 1971.
- (30) 3 months in 1972.
- (31) 3 months in 1973.
- (32) 3 months in 1974.

Based just on social security records, which total 131 months of employment beginning at the age of 20, the applicant's father was physically present in the United States for more than 10 years prior to the applicant's birth. This conclusion does not take into consideration any time the father spent in the United States following his birth in 1917 or any time that he may have spent in the United States between jobs or during the four years that he worked for 10 months or more, especially between 1945 and 1946.

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 now shown that he acquired United States citizenship at birth because he has established that his father was physically present in the United States for the required period prior to the applicant's birth. The appeal will be sustained.

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