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U.S. Department of Justice

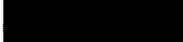
Immigration and Naturalization Service

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



15 OCT 2002

FILE:  Office: Miami

Date:

IN RE: Applicant: 

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

**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 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 Acting 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 July 25, 1990, in Canada. The applicant's father [REDACTED] was born in Haiti in May 1954 and became a naturalized U.S. citizen on July 25, 1978. The applicant's mother [REDACTED] was born in September 1954 in Canada. The applicant's mother never had a claim to United States citizenship. The applicant's parents married each other on January 11, 1982. 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 acting district director determined the record failed to establish that the applicant's United States citizen parent met the physical presence requirements at the time of the applicant's birth and denied the application accordingly.

On appeal, the applicant's father states that he has more than sufficient time in the United States for the applicant to be eligible for citizenship. The applicant's father provides evidence that he paid income taxes from 1974 through 1978, from 1985 through 1992, and from 1998 through 2000. He also submitted evidence that he studied at New York Institute of Technology from June 1974 to June 1975; at Nassau City College from June 1977 to July 1977; and at City University of New York from the Fall Semester of 1977 to June 1980.

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, effective for persons born on or after November 14, 1986 of the Act, provides in 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, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age 14 years...

The applicant's father has provided a transcript of his grades indicating that he was a student at New York College and New York Institute of Technology from June 1974 to June 1975 and from June 1977 to June 1980. He states in an affidavit that he was preparing his Medical Boards and then working from 1986 to 1991.

The applicant's father became a naturalized U.S. citizen in July 1978. One of the requirements for naturalization under section 316 of the Act, 8 U.S.C. 1427, is for the applicant to establish immediately preceding the date of filing the application for naturalization that he/she has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing the application has been physically present therein for periods totaling at least half that time....

The father's Service file indicates that he submitted his Petition for Naturalization on April 25, 1978, under oath before the clerk of the court. The father indicated on that petition that he had resided continuously in the United States from September 29, 1971, through May 18, 1978, the date of his interview. Therefore, the applicant's father was physically present in the United States for a period of more than six years prior to his naturalization and prior to the applicant's birth.

The applicant's father states that he returned to the Dominican Republic from 1980 through December 1982. He states that he started a clerkship in New York until June 1983 and then worked at South Shore Clinical laboratory from May 1984 to July 1987 (prior to the applicant's birthday of July 1990).

It is concluded that the father satisfied the 5-year physical presence requirement for the applicant under section 301(g) of the Act in effect on November 14, 1986.

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 that burden, and the appeal will be sustained.

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