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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: Houston

Date:

OCT 29 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, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on August 25, 1949, in Canada. The applicant's father, [REDACTED] was born in an unspecified country and is listed as a Canadian citizen. The applicant's mother, [REDACTED] was born in August 1920 in the United States. The applicant's parents married each other on March 9, 1944 in Texas. The applicant claims he acquired U.S. 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, at the time of the applicant's birth, as required under section 301(g) of the Act.

On appeal, the applicant provides copies of his mother's grade school, high school and college records in support of the application.

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 record contains a copy of a synopsis of the mother's school attendance record and some individual yearly school records. Some entries are extremely difficult to read and the applicant has not provided clarification of the unreadable portions of those documents.

The synopsis shows that the applicant's mother attended school in the United States when she was 7, 8, 12, 13, 14, 15, 16, and 17 years old. There is an entry for the year 1939 which cannot be read.

The high school record reflects that the applicant's mother attended high school sessions in Fall 1933, Spring and Fall 1934, Spring 1935, Fall 1936, Spring and Fall 1937, Spring 1938, and one session where the date and session are illegible. The record indicates that she was absent from the Dallas school system during the Fall 1935 and Spring 1936 sessions. The record indicates that she graduated on June 3, 1938. The record also reflects that she attended Texas Women's University from January 1938 to May 1938, a time which overlaps with a period indicated on her high school

records. The record is devoid of information regarding the mother's whereabouts following her birth up to the age of 7 years, and for the years between ages 9 and 11.

Although the applicant's mother appears to have attended school in the United States through eight chronological years as reflected in the synopsis, the record does not reflect that she attended school for eight full years during that time. There is a significant period of time which is not accounted for, from Spring 1935 through Fall 1936. The fact that the applicant's brother was born in the United States in 1945 does not, in itself, provide evidence that the applicant's mother was physically present for a total of 10 years at least 5 of which were after August 16, 1934.

Absent additional evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his mother was physically present in the United States for the required period prior to his birth.

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 not met this burden of establishing his mother had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.