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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: New York

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: [Redacted]

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, New York, New York, 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 January 4, 1964, in Canada. The applicant's father, [REDACTED] was born in Czechoslovakia in December 1930 and never had a claim to United States citizenship. The applicant's mother, [REDACTED] was born in July 1929 in Romania and became a naturalized U.S. citizen on July 10, 1956. The applicant's parents married each other on October 25, 1952. 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, at the time of the applicant's birth, as required under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

On appeal, counsel states that a fair and careful reading of the five affidavits in the record from family members clearly demonstrates that the applicant's mother resided in the United States for the requisite years. Counsel states that she resided in the United States between the years 1948 and 1963.

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.

It is unclear from the record exactly when the applicant's mother arrived in the United States. Her petition for naturalization indicates she entered on July 26, 1950. An affidavit from her husband says she arrived in Canada in March 1948 and went to Brooklyn a few months later. An affidavit from her uncle states that she came to Brooklyn in 1950.

Based on her Service record and her interview for naturalization on June 4, 1956, the Service established that she had been physically present in the United States for 5 years and 7 months. Following her marriage to the applicant's father in 1952, using the name [REDACTED] she gave birth to Ingrid in 1953 in Canada, to [REDACTED] in 1958 in Canada, and to the applicant in 1964 in Canada. The record contains a death certificate for [REDACTED] showing her death in Canada on March 31, 1969.

The affidavits from the applicant's father, sister, aunt and cousin are vague and unsupported by other corroborating evidence. And, as mentioned previously, give contradictory information. The applicant's father submitted an affidavit dated November 1997 in which he stated that the applicant's mother spent four months every year helping her mother at a small hotel in [REDACTED]

[REDACTED] The affidavit indicated she would be there for the months of June, July, August and September during the period 1954 through 1963. However, it is noted that she gave birth to [REDACTED] in Canada in June 1958, indicating she may not have been in New York every June between 1954 and 1963. The dates mentioned in these affidavits are at best close approximations due to the passage of time and the absence of supporting documentation. In addition, the record fails to contain documentary evidence containing her birth name "Lidia" other than documents contained in her Service record.

Absent such supportive 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.