

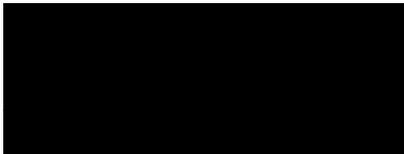
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



APR 23 2004

FILE:

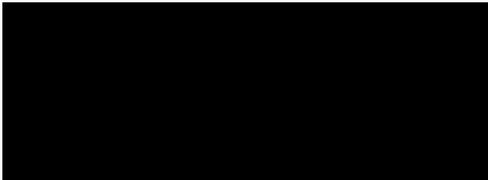
Office: AUSTIN, TEXAS

Date:

IN RE: Applicant

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director / District Director, Austin, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on December 18, 1969, in London, England. The applicant's mother, [REDACTED] was born in [REDACTED] on May 23, 1952, and obtained U.S. citizenship at birth through the applicant's paternal grandfather, William Paxson. The applicant's father, [REDACTED] was born on July 12, 1951, in London, England and is not a U.S. citizen. The applicant's parents were married on September 26, 1969, in London, England. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that she acquired U.S. citizenship at birth through her mother.

The director/district director found that the applicant had failed to establish her mother was physically present in the United States or its outlying possessions for a period totaling ten years, at least five years of which occurred after [REDACTED] reached the age of fourteen. The application was denied accordingly.

On appeal, the applicant asserts that the director/district director erred in requiring her to establish that her mother resided in the U.S. for 10 and 5-years rather than for 5 and 2-years, as set forth under present section 301 requirements. The applicant asserts further that her mother lived in the United States for many years.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born in London, England in 1969. The version of Section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls her claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See section 301(a)(7) of the former Act*. The applicant must therefore establish that her mother was physically present in the U.S. for a period totaling ten years between May 23, 1952 and December 18, 1969, and that five of those years were after May 23, 1966, when her mother turned 14.¹

The AAO notes that although the applicant asserted on appeal that her mother resided in the United States for many years, the applicant provided no information or evidence about which years Ms. [REDACTED] resided in the U.S. or where Ms. [REDACTED] resided. Moreover, the record contains no evidence to support the assertion that Ms. Paxson resided in the United States for any period of time during her life. Furthermore, in the present case, only 3 ½ years passed between the date of Ms. [REDACTED] 14th birthday in May of 1966, and the applicant's birth in December of 1969. It is therefore impossible for Ms. [REDACTED] to meet the five-year physical presence requirement between the passage of her 14th birthday and the birth of the applicant. Accordingly, the AAO finds that the applicant has failed to establish she is entitled to derivative U.S. citizenship pursuant to section 301(a)(7) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship

¹ The AAO notes that a child born on or after November 14, 1986, is subject to amended derivative citizenship provisions set forth in section 301(g) of the Immigration and Nationality Act (the Act), which require the U.S. citizen parent to be physically present in the U.S. or its outlying possessions for five years, at least two of which were after the age of fourteen.



Page 3

by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.