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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



ER

FILE: [Redacted] Office: PHILADELPHIA, PA

Date: JUN 15 2004

IN RE: Application [Redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 308 of the Immigration and Nationality Act; 8 U.S.C. § 1408.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Interim District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 29, 1962, in Panama. The applicant's father, [REDACTED] was born in Panama on July 7, 1917. The applicant's mother [REDACTED] was born in Panama on November 11, 1925. The applicant seeks a certificate of citizenship pursuant to sections 308 and 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. §§ 1408 and 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The interim district director found the applicant had failed to establish that his mother or father was a U.S. citizen at the time of the applicant's birth abroad, as required by both section 308 and 301 of the Act. The application was denied accordingly.

On appeal the applicant asserts that he is entitled to derivative U.S. citizenship through his father, pursuant to sections 308 and 301 of the Act. Specifically, the applicant asserts that under provisions of the Act, his father (Mr. [REDACTED]) obtained U.S. national status by virtue of his birth in the Panama Canal Zone in 1917, and by virtue of his subsequent employment with the U.S. government. The applicant indicates on appeal that his father also became a naturalized U.S. citizen. The applicant concludes that because his father was a national of the United States and because his father subsequently became a naturalized U.S. citizen, the applicant is entitled to derivative U.S. citizenship benefits under sections 308 and 301 of the Act.¹

Section 308 of the Act provides in pertinent part that:

Unless otherwise provided in section 301 of this title, the following shall be nationals, but not citizens of the United States at birth:

- (1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;
- (2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;

...

¹ In addition to the above argument, the applicant asserts on appeal that he is also entitled to U.S. citizenship pursuant to section 328 of the Act, 8 U.S.C. §1439. The AAO notes that the provisions set forth in section 328 of the Act relate to requirements for affirmative naturalization applications under section 316 of the Act, 8 U.S.C. § 1427. The AAO notes further that although it has appellate review authority over application for certificate of citizenship issues (i.e. derivative citizenship claims), the AAO does not have appellate review authority over applications for naturalization. See 8 C.F.R. § 2.1. See also 8 C.F.R. § 103.1(f)(3)(iii) (2003).

The AAO additionally notes that the applicant makes assertions on appeal regarding the propriety of being detained and being placed into removal proceedings as well as his eligibility for relief in removal proceedings. As noted above, the AAO has no appellate review authority over these issues and the issues will therefore not be addressed.

(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not 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 seven years in any continuous period of ten years-

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 301(g) shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

Section 301(g) of the Act, 8 U.S.C. § 1401 provides, in pertinent part that:

(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 five years, at least two of which were after attaining the age of fourteen years.²

The AAO notes that section 308 of the Act relates to U.S. nationals and not U.S. citizens. The AAO notes further that in order to be eligible for U.S. citizenship under section 301 of the Act, the applicant must demonstrate that his father was a U.S. citizen rather than a U.S. national.

INS Interpretations 303.1(a) provides that, "[t]he Republic of Panama leased the Canal Zone in perpetuity to the United States by treaty ratified February 26, 1904.

Pursuant to INS Interpretations 308.1(b) :

(b) All Panamanian citizens residing in the Canal Zone on February 26, 1904, who did not act to retain such status, became United States nationals as of such date. One born in the Canal Zone on or after the 1904 date but before January 13, 1941, became a United

² The AAO notes that because the applicant was born in 1962, the version of section 301 of the Act that was in effect at that time (section 301(a)(7) rather than 301(g)) would control his claim to derivative citizenship. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

States national at birth, if his parents then had such status. Previous residence of both parents in the United States or its outlying possessions is an additional requirement for one born on or after January 13, 1941.

Since 1937, under certain circumstances, United States citizenship was also acquired in the Canal Zone.

(Emphasis added). INS Interpretations 303.1(a) and (b) provide further that:

(a) [T]he first legislative enactment of August 4, 1937, conferred United States citizenship, as of such date, on all persons born in the Canal Zone, after February 25, 1904, and before the 1937 date, **whose fathers, mothers, or both were United States citizens at the time of such person's birth.** By the same act, persons born on or after the 1937 date, **under the same conditions of parentage,** were declared to have similar status at birth.

Under the Act of October 14, 1940 . . . comparable provisions bestow citizenship under identical conditions whether the person was born before or after the effective dates of the respective statutes.

....

(b) [T]he foregoing enactments also confer similar status under like conditions upon a person born in the Republic of Panama after February 25, 1904, provided the **citizen parent** at the time of such persons birth was employed by the United States Government, the Panama Railroad Company, or its successor in title.

....

Moreover, under other conditions specified in INTERP 301.1(b) [pertaining to child legitimation and residency of U.S. citizen parent requirements], persons born in the Republic of Panama to the **United States citizen parents** could and can acquire citizenship at birth.

(Emphasis added). The record in the present case reflects that the applicant's father (Mr. [REDACTED]) was born in Panama in 1917. The record contains no evidence, however, to indicate that Mr. [REDACTED] parents (the applicant's grandparents) obtained U.S. national or citizenship status prior to Mr. [REDACTED] birth. Moreover, despite the applicant's general assertions to the contrary, the record contains no evidence to indicate that Mr. [REDACTED] became a naturalized U.S. citizen prior to the applicant's birth in 1962. The AAO notes that instead, the evidence contained in the record demonstrates that Mr. [REDACTED] was a Panamanian citizen rather than a U.S. citizen. (See Mr. [REDACTED] Civil Service Retirement Application (Form 2801), stating that Mr. [REDACTED] is a citizen of Panama. See also Death Certificate issued in November 1978 by the Canal Zone Government stating that Mr. [REDACTED] s citizenship was Panamanian).

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 AAO finds that the applicant in the present case has failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.