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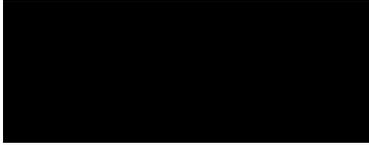
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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10/22/04



U.S. Citizenship
and Immigration
Services



FILE:



Office: NEW YORK, NY

Date: **OCT 22 2004**

IN RE:

Applicant:



APPLICATION:

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

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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 30, 1980, in London, England. The applicant's father, [REDACTED] was born in Belgium, and he obtained a certificate of U.S. citizenship on April 30, 1957. The applicant's mother, [REDACTED] was born in Israel, and she is not a U.S. citizen. The applicant's parents married on August 18, 1971, 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 he acquired U.S. citizenship at birth through his father.

The district director concluded that despite district requests for additional evidence, the applicant had failed to present evidence by January 28, 2003, establishing that his father was physically present in the United States for at least ten years prior to the applicant's birth, five years of which occurred after the applicant's father turned fourteen. The application was denied accordingly for lack of prosecution.¹

The applicant asserts on appeal that he submitted relevant physical presence evidence to the district office on January 28, 2003, and that the district director erred in not taking additional school transcript evidence into consideration.

"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 England in 1980. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls 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.

In the present matter, the applicant must establish that his father was physically present in the U.S. for ten years between June 28, 1950 and January 4, 1980, and that five of those years occurred after June 28, 1964, when his father turned fourteen. The record contains copies of the following documents pertaining to the applicant's father's [REDACTED] physical presence in the United States during the requisite time period:

A Certificate of Citizenship obtained on April 30, 1957.

¹ The AAO notes that although the district director's decision refers to physical presence requirements set forth in section 301(a)(7) of the former Act, the decision erroneously refers to sections 322 and 320 of the Act, 8 U.S.C. §§ 1433 and 1431 as controlling law in the present matter. Sections 320 and 322, were amended by the Child Citizenship Act (CCA), and became effective on February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, he does not qualify for consideration under sections 320 and 322 of the Act.

School transcript records indicating that [REDACTED] attended college classes at [REDACTED] in Monsey, New York, between Fall 1963 and Spring 1971, and indicating that [REDACTED] graduated from college on August 31, 1971.

The AAO notes its concerns regarding the probative value of the school transcripts submitted by the applicant. The transcript records state that they are not valid without signature and seal. Although the transcripts are signed, none of the transcripts submitted by the applicant contain seals. In spite of the above concerns, however, the AAO finds that for purposes of the present decision, it is not necessary to definitely determine whether the school transcripts submitted by the applicant are valid.

The AAO finds that even if [REDACTED] school transcripts are found to be probative of his physical presence in the U.S., the transcripts establish physical presence for only eight years between Fall 1963 and Spring 1971. The AAO finds further that although the Certificate of Citizenship issued to [REDACTED] establishes that he was physically present in the U.S. on April 30, 1957, the document does not establish that [REDACTED] resided or was physically present in the U.S. at any time prior to the Fall of 1963. Accordingly, the AAO finds that the applicant has failed to establish that his father was physically present in the U.S. for the ten-year period required by 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 by a preponderance of the evidence. The applicant has not met his burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.