



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

SEP 10 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship pursuant to Sections 201(g) and 201(i) of the Nationality Act of 1940, 8 U.S.C. §§ 601(g) and (i).

ON BEHALF OF APPLICANT:

[REDACTED]

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Interim District Director, Los Angeles, California, 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 August 17, 1947, in the Philippines. On July 16, 1959, the applicant was legally adopted in the United States by John [REDACTED] (M [REDACTED] and [REDACTED]

[REDACTED] The record reflects that the applicant's adoptive father was born in Spokane, Washington on September 6, 1924, and that he is a U.S. citizen. The applicant's adoptive mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship under section 201 of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (the NA), 8 U.S.C. § 601, based on the claim that she acquired U.S. citizenship through her adoptive father.

Referring to U.S. Department of State, Foreign Affairs Manual provisions, the director determined section 201(g) of the NA applied only to natural children of U.S. citizens and did not apply to adopted children. The application was denied accordingly.

On appeal counsel asserts that the applicant qualifies as a "child" under section 102(h) of the NA. Counsel asserts further that the applicant's adoptive father satisfies the U.S. military service and residence requirements set forth in section 201(i) of the NA, and that the applicant therefore qualifies for citizenship under section 201(i) of the NA.

"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 on August 17, 1947. Section 201 of the NA therefore applies to this case.

Section 201(g) of the NA states, in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease..

The Act of July 31, 1946, Pub. L. 79-571, 60 Stat. 721, amended section 201(g) of the NA, and added section 201(i) of the NA which states:

A person born outside the United States and its outlying possession of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of

termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

Section 102(h) of the NA states:

The term "child" includes a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; also a child adopted in the United States, provided such legitimation or adoption takes place before the child reached the age of sixteen years and the child is in the legal custody of the legitimating or adopting parent or parents.

The record reflects that the applicant was adopted in Los Angeles County, California on July 16, 1959, when she was eleven years old. The record reflects further that the applicant's adoptive father, Mr. [REDACTED] obtained legal custody over the applicant at the time of her adoption, on July 16, 1959. *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970) (stating that legal custody vests "by virtue of either a natural right or a court decree"). Based on the statutory language contained in section 102(h) of the NA, the applicant therefore appears to have established that she meets the definition of "child" for purposes of sections 201(g) and 201(i) of the NA.

In finding that the applicant did not meet the definition of "child" set forth in the NA, the director referred to provisions contained in Volume 7 of the U.S. Department of State Foreign Affairs Manual (FAM). The director stated that, "[a]lthough Section 102(h) NA included in its definition of "child" a child adopted in the United States . . . adopted children could not acquire citizenship automatically through the naturalization of their adoptive parents. [7 FAM 1153.4-3]". The director additionally referred to 7 FAM 1131.2 and 7 FAM 1131.3.

7 FAM 1131.2 states:

Since 1790, there have been *two* prerequisites for transmitting U.S. citizenship to children born abroad:

- (1) At least one *natural* parent must have been a U.S. citizen when the child was born. The only exception is for a posthumous child.
- (2) The U.S. citizen parent(s) must have resided or been physically present in the United States for the time required by the law in effect when the child was born.

7 FAM 1131.3, states:

- a. Adoption of an alien minor by an American does not confer U.S. citizenship on the child. *Adoption, however, is one way in which a U.S. citizen father can legitimate his natural child born out of wedlock for purposes of transmitting citizenship.*
- b. For provisions that govern the naturalization of adopted children, see 7 FAM 1153.4

The AAO notes that the provisions contained in 7 FAM 1153.4 pertain to the acquisition of U.S. citizenship when a child's parents become naturalized U.S. citizens after the child's birth. The provisions do not apply to derivative citizenship cases in which the U.S. citizen parent was a citizen prior to the child's birth. 7 FAM 1153.4 provisions are therefore not applicable in the present case.

The AAO notes further that the 1940 NA and subsequent versions of the Immigration and Nationality Act, contain clear statutory definitions which incorporate adopted children into the general definition of "child" for derivative citizenship purposes. *See* Section 102(h) NA. *See also* section 101(b)(1) of the Immigration and Nationality Act of 1952, and as amended in 1986 and 2000. The AAO finds that the FAM provisions relied upon by the director are general in nature and are not applicable to section 102(h) of the NA, which clearly states that an adopted child meets the definition of "child" for purposes of the NA, if the adoption takes place in the United States before the child reaches the age of sixteen, and the child is in the legal custody of the adopting parent(s). The AAO finds further that it is bound by the definition of "child" contained in section 102(h) of the NA. The applicant has therefore established that she meets the definition of "child" under section 102(h) of the NA.

In order to meet the requirements set forth in section 201(i) of the NA, the applicant must first establish that Mr. [REDACTED] is a U.S. citizen who served honorably in the U.S. Armed Forces between December 7, 1941 and the termination of hostilities in 1945, and that he resided in the U.S. for ten years prior to August 17, 1947, at least five years of which occurred after Mr. [REDACTED] turned twelve on September 6, 1936. The applicant must then demonstrate that she herself meets the five-year U.S. residence requirements set forth in section 201(i) of the NA.

The record contains the following evidence pertaining to Mr. Balderson's U.S. Armed Forces service and his residence in the United States between September 6, 1924 and August 17, 1947:

A birth certificate reflecting that Mr. [REDACTED] was born in Spokane, Washington on September 6, 1924;

An Honorable discharge certificate from the U.S. Coast Guard, dated August 15, 1945, stating that the certificate was "[I]ssued pursuant to P.L. 95-202 for service in the "American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945."

School records reflecting that Mr. [REDACTED] attended school in the U.S. for nine years between 1930 and 1939 (between the ages of six and fifteen).

Social Security itemized earnings statement reflecting that Mr. [REDACTED] was employed

by U.S. shipping and maritime employers between 1944 and 1947 (between the ages of twenty and twenty-three).

A declaration signed by Mr. [REDACTED] on February 22, 2001, stating that he resided in the U.S. his entire life with the exception of living in the Philippines from April of 1950 through July 1953. The declaration additionally states that Mr. [REDACTED] left the U.S. in 1941 to serve in the armed services during the war, and returned to the U.S. in October 1945.

The AAO finds that the birth certificate and U.S. Coast Guard honorable discharge evidence submitted by the applicant establish that Mr. [REDACTED] qualifies as a U.S. citizen who served honorably in the U.S. Armed Forces during wartime between 1941 and 1945. Mr. [REDACTED] therefore qualifies for consideration under the amended residence requirements set forth in section 201(i) of the NA. The AAO finds further that the birth certificate, school record, and military service evidence contained in the record establish that Mr. [REDACTED] resided in the United States for ten years between September 6, 1924 and August 17, 1947, and that five of those years occurred after Mr. [REDACTED] turned twelve on September 6, 1936.

Nevertheless, the AAO finds that the applicant has failed to establish that she meets the section 201(i) requirement that she reside in the U.S. for five years between the ages of thirteen and twenty-one (between August 17, 1960 and August 17, 1968). The record contains evidence reflecting that the applicant attended school in Los Angeles, County, California between 1958 and 1962 (between the ages of eleven and fifteen). Based on this evidence, the applicant established only that she resided in the U.S. for two years between the ages of thirteen and twenty-one. The record contains no other evidence pertaining to the applicant's residence in the U.S. during the requisite time period. Moreover, notations on the applicant's N-600 Application for Certificate of Citizenship, indicate that the applicant returned to the Philippines in 1962, and that she did not return to the United States until 1979, well after her twenty-first birthday. Based on the above evidence, the AAO finds that the applicant failed to meet the residence requirements set forth in section 201(i) of the NA.¹

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish U.S. citizenship by a preponderance of the evidence. The applicant has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the applicant also failed to meet the identical section 201(g) requirement that she reside in the U.S. for five years between the ages of thirteen and twenty-one.