



U.S. Citizenship  
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Services

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FILE:



Office: MIAMI, FL

Date: **AUG 10 2005**

IN RE:

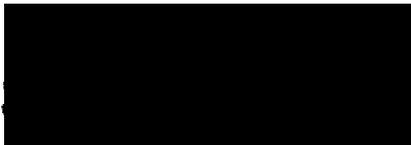
Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting Director, Miami, Florida, 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 May 22, 1942, in Panama. The applicant's father, [REDACTED] was born in Panama on May 3, 1915. The applicant's paternal grandfather, [REDACTED] was born in Poland on November 5, 1896, and he became a naturalized U.S. citizen on April 8, 1920, at the age of twenty-three. The applicant's father was five years old when [REDACTED] became a naturalized U.S. citizen. The applicant's mother, [REDACTED] was born in Panama in November 1927. She is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 201(g) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(g), based on the claim that she derived U.S. citizenship at birth through her father.

The director determined that the applicant had failed to establish her father was a U.S. citizen at the time of her birth, as required by section 201(g) of the Nationality Act. The application was denied accordingly.

On appeal counsel asserts that pursuant to Section 5 of the Act of March 2, 1907, Pub. L. 59-193, 34 Stat. 1228, the applicant's father derived U.S. citizenship retroactively at birth when the applicant's paternal grandfather became a naturalized U.S. citizen on April 8, 1920. Counsel additionally asserts that the applicant's father was exempt from citizenship retention requirements pursuant to U.S. statutes in effect prior to the Naturalization Act of May 24, 1934. Counsel asserts further that the applicant is exempt from citizenship retention requirements contained in section 201(g) of the Nationality Act, because her father was a U.S. government employee in Panama.

"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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on May 22, 1942. Section 201(g) of the Nationality Act is therefore applicable to her derivative citizenship claim.

Section 201(g) of the Nationality Act 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 preceding provisos shall not apply to a child born abroad **whose American parent is at the time of the child's birth** residing abroad solely or principally in the employment of the Government of the United States . . . .

Counsel claims that pursuant to Section 5 of the Act of March 2, 1907, the applicant's father derived U.S. citizenship at birth through his father, [REDACTED] upon [REDACTED] naturalization as a U.S. citizen in April 1920. Based on this reasoning, counsel asserts that the applicant's father was a U.S. citizen at the time of the applicant's birth, and that the applicant is entitled to citizenship under section 201(g) of the Act.

Section 5 of the Act of March 2, 1907 states that:

[A] child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

The AAO finds that the plain language contained in Section 5 of the Act of March 2, 1907, clearly requires the applicant to establish that her father began to reside permanently in the United States as a minor. The AAO finds further that counsel provided no legal evidence or basis to support a contrary or retroactive interpretation of the statutory language of section 5 of the Act of March 2, 1907. The AAO notes that Panama was not a territory or part of the United States in 1920. Moreover, the applicant's Form N-600, Application for Certificate of Citizenship (N-600 application) reflects that the applicant's father never resided in the United States, and the record contains a sworn affidavit signed by the applicant on February 24, 2000, stating that her father never lived in or traveled to the United States.

Because the applicant's father did not begin to reside permanently in the U.S. as a minor, the AAO finds that the applicant's father did not satisfy the requirements for citizenship as set forth in Section 5 of the Act of March 2, 1907.<sup>1</sup>

The applicant therefore failed to establish that her father was a U.S. citizen at the time of her birth. Accordingly, the applicant does not qualify for consideration of her citizenship status under section 201(g) of the Nationality Act and the citizenship retention issues raised by counsel need not be addressed.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden and the appeal will be dismissed.

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<sup>1</sup> The AAO notes that the applicant's father also does not qualify for citizenship pursuant to the Act of August 4, 1937, Pub. L. 75-242, 50 Stat. 558, which states in pertinent part that:

[A]ny person born in the [REDACTED] on or after February 26, 1904, and whether before or after the effective dates of this Act, whose father or mother or both **at the time of the birth of such person was or is a citizen of the United States** [is] declared to be a citizen of the United States.

Sec. 2 Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both **at the time of the birth of such person was or is a citizen of the United States** employed by the Government of the United States or by the Panama Railroad Company, is declared to be a citizen of the United States. (Emphasis added).

**ORDER:** The appeal is dismissed.