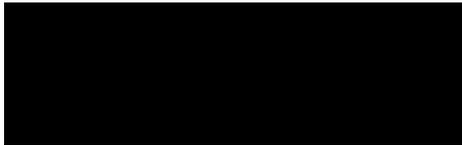


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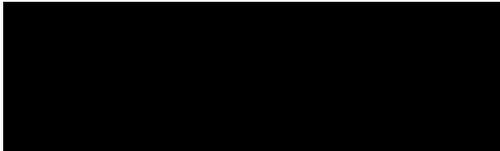
Applicant:



APPLICATION:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.<sup>1</sup>

The information contained in the applicant's Form N-600, Application for Certificate of Citizenship (N-600 Application) reflects that the applicant was born on January 25, 1942, in Pstragowa, Poland. The N-600 application reflects that the applicant's father, [REDACTED] was born in New Bedford, Massachusetts on August 26, 1904, and that he was a U.S. citizen. [REDACTED] died on February 28, 1986, in Strzyzow, Poland. The N-600 application reflects that the applicant's mother, [REDACTED] was born in Prozedmiescie, Poland on March 5, 1907, and that she is not a U.S. citizen. [REDACTED] married on April 30, 1934, in Rzeszow, Poland. The N-600 application reflects that the applicant entered the U.S. with a B2 non-immigrant visa on September 7, 1987, at the age of forty-five. The applicant has resided in the U.S. since her 1987 entry into the country. The applicant presently seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. (1940 Ed.) § 601(g) (now known as section 301(g) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1401(g)), based on the claim that she acquired U.S. citizenship at birth through her father.

The district director determined in pertinent part, that the applicant had failed to establish her father's identity by a preponderance of the evidence. The district director determined further that the applicant had failed to establish, by a preponderance of the evidence that her father resided in the United States or its outlying possessions for a period of ten years prior to the applicant's birth, at least five years of which occurred after her father reached the age of sixteen. In addition, the district director noted that the applicant did not meet the qualifications for citizenship as set forth in section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432. The application was denied accordingly.

On appeal counsel asserts that the evidence establishes [REDACTED] is a U.S. citizen and that he was the applicant's father. Counsel asserts that in spite of good faith efforts to obtain U.S. residence evidence for the applicant's father, he was unable to obtain such evidence due to the passage of time and limited time-period record maintenance by schools, governments, churches and employers. Counsel asserts that the affidavit evidence submitted is therefore the best evidence available regarding the applicant's father's U.S. residence. Counsel asserts further that post-World War II conditions in Poland kept the applicant's father from leaving Poland despite his efforts and desire to return to the United States. In addition, counsel notes that Freedom of Information Act (FOIA) request results demonstrate that in 1999, the U.S. Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) recommended approval of the applicant's N-600 application, and counsel indicates that, although the recommended approval states that it was made pursuant to section 321 of the former Act, the applicant also qualifies for citizenship under section 201(g) of the Nationality Act.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See generally, Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002).

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<sup>1</sup> The record reflects that the district director initially denied the application on August 24, 1999, and that counsel appealed the denial to the AAO in October 1999. The district director subsequently reopened and reconsidered the application, and the application was denied again on September 11, 2003.

Section 321 of the former Act, stated, in pertinent part, that:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased;  
or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years;  
and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The AAO finds that the applicant does not qualify for U.S. citizenship pursuant to the provisions set forth in section 321 of the former Act. The applicant in the present matter claims that her father was born a U.S. citizen. Thus the applicant's father did not become a naturalized U.S. citizen. Moreover, the record reflects that the applicant's mother did not, at any time, become a naturalized U.S. citizen, and the applicant does not otherwise meet the requirements set forth in section 321 of the former Act.

"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 Nationality Act of 1940 was in effect at the time of the applicant's birth. The statutory provisions set forth in section 201(g) of the Nationality Act therefore apply to the applicant's citizenship claim.

Section 201(g) of the Nationality Act states 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.

In the present matter, the applicant must establish that her father resided in the U.S. or its outlying possessions for ten years between the date of his birth and the date of the applicant's birth on January 25, 1942, and that five of those years occurred after the applicant's father turned sixteen.<sup>2</sup>

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In *Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the evidence establish something is probably true.

The record contains a Massachusetts birth certificate, recorded on August 13, 1910, reflecting that [REDACTED] was born to [REDACTED] in New Bedford, Massachusetts on August 26, 1904. The AAO notes the district director's concerns regarding the authenticity of Mr. [REDACTED] birth certificate based on a six-year delay in recording [REDACTED] birth. The record contains no investigation or finding that the birth certificate is fraudulent, however, and the AAO finds that other evidence in the record corroborates [REDACTED] August 26, 1904 birth date in Massachusetts.

The Polish marriage certificate reflecting that [REDACTED] married [REDACTED] on April 30, 1934, states that [REDACTED] is the son of [REDACTED] and that he was born in New Bedford, Massachusetts on August 26, 1904. A 1986, Polish death certificate contained in the record additionally states that [REDACTED], son of [REDACTED] was born in the U.S. on August 26, 1904. Moreover, although the present record does not contain the applicant's birth certificate, the district director's decision indicates on page three that the applicant's Polish birth certificate was submitted and reviewed, and that her father's name is recorded on the birth certificate. It is further noted that the applicant's Polish marriage certificate, although untranslated, indicates that the applicant was born to [REDACTED] in 1942. Based on all of the above factors, the AAO finds that the applicant has established by a preponderance of the evidence that [REDACTED] and [REDACTED] were the same person (hereafter referred to as Mr. [REDACTED]). The applicant has additionally established that Mr. [REDACTED] was born on August 26, 1904, and that Mr. [REDACTED] was her father.

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<sup>2</sup> The AAO notes the additional requirement that the applicant establish she was continuously present in the U.S. between the ages of fourteen and twenty-eight. The AAO notes further, however, that on March 1, 1995, Title 1 of the Immigration and Nationality Technical Corrections Act of 1994 allowed, with limited exceptions, for oath of allegiance restoration of U.S. citizenship to former citizens who had lost their nationality by failing to comply with retention requirements set forth in the Immigration and Nationality Act of 1952 and the Nationality Act of 1940. Section 324(d)(1) of the Act provides that:

A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 301(b) (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 337 be a citizen of the United States and have status of citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313. Nothing in this subsection or any other provision of law shall be construed as conferring United States citizenship retroactively upon such person during any period in which such person was not a citizen.

The evidence relating to Mr. [REDACTED] residence in the United States during the requisite time period consists of the following:

A Birth Certificate, recorded on August 13, 1910, reflecting Mr. [REDACTED] birth in New Bedford, Massachusetts on August 26, 1904.

Several letters written by the applicant's attorney requesting records relating to Mr. [REDACTED]

A May 9, 2002, letter from the New Bedford, Massachusetts, Board of Election Commissioners, stating they have no record of Mr. [REDACTED] residence in the city between 1919 – 1928, and no records reflecting that Mr. [REDACTED] was registered to vote between 1920-1938.

A September 5, 2002, letter from the Corporation of London, Guildhall Library stating that passenger lists for vessels entering and leaving the United Kingdom between 1890 – 1960 are held at their Public Record Office, but that it is unlikely the records would include the applicant's father unless he transferred to a different ship in the U.K. prior to traveling to Poland. The letter states further that it would be impractical to search for the applicant's father's name without knowing the port and his approximate date of arrival in the UK. The letter then suggests searching U.S. National Archives passenger lists.

A May 1, 2002, letter from the Our Lady of Perpetual Help Church, stating that a search of the Church Register reveals that a [REDACTED] was baptized at the Church, but that his date of birth is listed as August 31, 1906, not August 26, 1904.

A May 6, 2002, letter from Nashawena Mills Corporation stating that "Nashawena Mills Corporation of 1942" was probably a weaving mill and no longer exists, and that the present Nashawena Mills Corporation is not a manufacturing company and is in no way connected to the 1942 corporation.

A May 23, 1999, affidavit signed by [REDACTED] stating that her mother died in 1926, when she was eleven years old. The affiant states that she remembers that soon after her mother's funeral, Mr. [REDACTED] moved with his mother to her neighbor's (his grandparent's) house, and that they were subsequently friends of the family.

A May 16, 1999, affidavit signed by [REDACTED] stating that her father was Mr. [REDACTED] brother, and that Mr. [REDACTED] came to Poland from America in 1926 (when the affiant was about seventeen years old). The affiant states that he sometimes stayed at Mr. [REDACTED] house and that they hunted and farmed together on occasion.

A December 18, 2002, affidavit signed by [REDACTED] stating that she was born in Poland on June 2, 1958, and that Mr. [REDACTED] and his family were close family friends. The affiant states that she remembers Mr. [REDACTED] telling stories about his journey to Poland from Massachusetts in 1925.

A February 25, 2003, affidavit signed by [REDACTED] stating that his mother is the applicant's mother's sister, and that his family lived near Mr. [REDACTED] family in Poland. The affiant states that he remembers Mr. [REDACTED] telling his family that he lived in Massachusetts until his twenty-second birthday in 1925. (A Certificate of Naturalization attached to the affidavit reflects that the affiant was born in Poland on March 22, 1955.)

A February 2, 1949 letter from Nashawena Mills, stating that [REDACTED] as worked there as a weaver since August 17, 1942, and her earnings. (The AAO notes that the letter was written in support of Mr. [REDACTED] 1948 plan to return to the United States.)

The district director additionally discusses the applicant's submission of a 1926, Polish National Alliance Insurance Certificate as evidence of her father's residence in the United States. The insurance certificate is not contained in the present record. However, the AAO notes that on appeal counsel does not dispute the district director's finding that the insurance certificate was issued to a different [REDACTED] born September 23, 1903.

The district director also discusses the applicant's submission of U.S. Embassy in Warsaw, Poland, correspondence sent to Mr. [REDACTED] in 1948, informing Mr. [REDACTED] of what he needed to do to travel to the United States. The AAO notes that this correspondence is also not contained in the record. However, the district director's and counsel's discussion of the letter reflect that the letter was general and informative in nature, and that it did not contain information specific to Mr. [REDACTED] or relating to his residence in the U.S. or his date of entry into Poland.

The AAO finds that the Massachusetts birth certificate evidence contained in the record establishes by a preponderance of the evidence that Mr. [REDACTED] resided in the United States for approximately six years, between the time of his birth in August 1904, until the time that his birth was registered in Massachusetts in August 1910. The AAO finds, however, that the applicant has failed to establish that Mr. [REDACTED] resided in the U.S. after 1910.

The AAO finds that the Our Lady of Perpetual Help Church letter lacks probative value as to Mr. [REDACTED] residence in the U.S. because it contains contradictory birth date information for Mr. [REDACTED] and because it contains no baptism date. The AAO additionally finds that the affidavits signed by [REDACTED] lack probative value because the affiants were born more than twenty years after Mr. [REDACTED] alleged entry into Poland, and the affiants lack any personal knowledge of Mr. [REDACTED] residence in the U.S. or his entry into Poland. The affidavits signed by [REDACTED] also lack probative value. The AAO notes that the affiants have no personal knowledge of Mr. [REDACTED] residence in the United States. Moreover, the affidavits lack corroborative evidence and material detail relating to the affiants' recollection of events in 1926. The AAO additionally finds that the record contains no evidence to support the contention that Mr. [REDACTED] worked at the Massachusetts based, Nashawena Mills Corporation of 1942, or that he resided in or registered to vote in New Bedford, Massachusetts between 1919 and 1926.

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 failed to establish by a preponderance of the evidence that her father resided in the United States after 1910, when he was six years old. The applicant therefore failed to establish that her father resided in the United States for ten years, prior to the applicant's birth, five years of which were after Mr. [REDACTED] turned sixteen. Accordingly, the applicant is not eligible for citizenship under section 201(g) of the Nationality Act, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.