



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: BUFFALO, NEW YORK

Date: **JUL 18 2005**

IN RE: Applicant [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 30, 1965 in Canada. The applicant's mother was born On November 21, 1939 in Memphis, Tennessee, and she is a U.S. citizen. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents were married in Tennessee on July 30, 1960. The applicant seeks a certificate of citizenship pursuant to § 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found that, based on the evidence in the record, the applicant had failed to establish that his mother resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after the age of fourteen, as required by § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, the applicant submits an affidavit executed by his mother's brother attesting to his mother's U.S. citizenship and physical presence in the United States until her marriage in 1960. The AAO finds that the evidence submitted establishes the applicant's mother's presence in the United States for the requisite time period.

"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 in this case was born in 1965; therefore, § 301(a)(7) of the former Act controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states 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 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The applicant has established that his mother was born in the United States; hence, she was a U.S. citizen at the time of the applicant's birth. The applicant must also establish that his mother was present in the United States for a total of ten years between her birth on November 21, 1939 and his birth on July 30, 1965, including five years between his mother's fourteenth birthday on November 21, 1953 and his birth. The record contains the following evidence relating to the applicant's mother's physical presence prior to 1965:

The applicant's mother's birth certificate showing her birth in Memphis, Tennessee on November 21, 1939;

The applicant's mother's baptismal certificate showing her baptism in Memphis in 1947, her first communion in 1947, and her confirmation in 1948;

A certificate showing the applicant's mother's completion of the eighth grade at a Memphis school in 1953;

A marriage certificate showing the applicant's mother's marriage to his father on July 30, 1960 in Memphis, Tennessee, reflecting his mother's residence in Memphis;

A Canadian Immigration Identification Card showing the applicant's mother's entry into Canada as a landed immigrant on September 29, 1960;

The applicant's mother's affidavit dated August 4, 1989 stating that she lived in the United States from her birth in 1939 until September 1960; and

The applicant's uncle's affidavit dated June 21, 2004 stating that the applicant's mother, the affiant's sister, lived in the United States from her birth in 1939 until she moved to Canada shortly after her marriage in July 1960.

The record also contains an announcement for high school commencement exercises in August 1958. The applicant's mother's name is printed on one side of the announcement, but the city in which the high school is located is not noted on the announcement. The AAO finds that the record as a whole, including the two affidavits, contains sufficient detailed, consistent evidence to conclude that it is more likely than not that the applicant's mother was physically present in the United States for ten years prior to the applicant's birth, five years of which were subsequent to his mother's fourteenth birthday. Accordingly, the applicant is determined to be eligible for citizenship under § 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 met his burden of proof; therefore, the appeal will be sustained.

ORDER: The appeal is sustained.