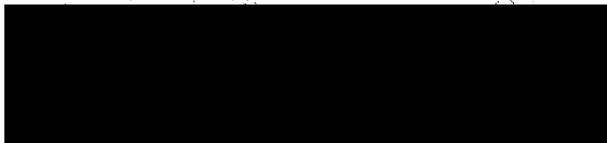


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES, CA

Date:

SEP 30 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on March 19, 1955, in the Philippines. The applicant's father, [REDACTED] was born in the Philippines on December 13, 1915. He died in the Philippines on September 6, 1977. The applicant claims that her father derived U.S. citizenship through his father, [REDACTED] who was born in the United States on September 11, 1888. The applicant's mother, Soledad Dantes Tupas, was born in the Philippines on October 23, 1930, and she is not a U.S. citizen. The applicant's parents were married in the Philippines on June 17, 1950. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7) (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 derived U.S. citizenship at birth through her father.

The district director found that the applicant had established her father was a U.S. citizen. The district director found further that the applicant had established that [REDACTED] as physically present in the U.S. or its outlying possession for up to eight years in 1915, 1928, 1942-1946, and 1950. The district director found, however that the applicant had failed to establish that prior to her birth [REDACTED] was physically present in the United States or its outlying possession for ten years, at least five years of which occurred after he turned fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant asserts the evidence in the record establishes that her U.S. citizen father was physically present in a U.S. outlying possession (the Philippines) for more than ten years prior to her birth, at least five years of which were after [REDACTED] turned fourteen.

"[T]he 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 (9th Cir. 2000) (citations omitted). The applicant was born on March 19, 1955. Section 301(a)(7) of the former Act is therefore applicable to her derivative U.S. citizenship claim.

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 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 requirement of this paragraph.

In the present matter, the applicant must establish that her father was a U.S. citizen and that he was physically present in the U.S or its outlying possessions for ten years between December 13, 1915 and March 19, 1955, and that at least five years of physical presence occurred after December 13, 1929.

Section 1993 of the Revised Statutes of the United States of 1878 (Section 1993 of the Revised Statutes), applies to children born abroad to U.S. citizens prior to May 24, 1934, and states that:

All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

The record contains the following evidence relating to [REDACTED] status as a U.S. citizen:

A copy of a March 20, 1978, South Carolina Department of Health and Environmental Control letter reflecting that State law did not require the filing of birth records until January 1, 1915, and that no records are on file for births prior to that date.

A copy of a January 20, 1978, letter from the U.S. Department of Commerce stating that Census of 1900 records reflect that [REDACTED] (father) was born in South Carolina on September 11, 1888, and resided with his family in Calhoun, Alabama.

A copy of an August 19, 1977, letter from the U.S. Veterans Administration Office reflecting that [REDACTED] was born in Columbia, South Carolina on September 8, 1888, that he served with the U.S. Navy from September 21, 1905 to January 30, 1932, and that he died in the Philippines on September 8, 1933.

A copy of a March 8, 1936, letter from the U.S. Navy Department reflecting that [REDACTED] enlisted in the Navy on September 21, 1905, in Chattanooga, Tennessee, and that he was transferred to the Fleet Naval Reserve and released from active duty on January 30, 1932.

A copy of a September 8, 1934, letter from the Municipal Government of Iloilo, Philippines reflecting that [REDACTED] were married on September 7, 1912.

A copy of a July 19, 1977, Certification from the Iloilo, Philippines, Civil Registrar, reflecting that an official record of [REDACTED] and [REDACTED] marriage on September 7, 1912, no longer exists due to the destruction of records during the war.

A copy of a Certificate of Baptism translated by the U.S. Veterans' Bureau, reflecting that [REDACTED] legitimate son of [REDACTED] and [REDACTED] born December 13, 1915, was baptized on August 3, 1928, at the Roman Catholic Apostolic Church in Iloilo, Philippines.

A copy of a March 3, 1997, Certification from the Manila, Philippines Records Management and Archives Office reflecting that the 1915 Register of Births for the Municipality/City of Jaro, Iloilo, Philippines is not on file with the National Archives and that there is therefore no information about the birth of [REDACTED] alleged to have been born on December 13, 1915.

A copy of a Death Certificate reflecting that [REDACTED] born on December 13, 1917 to [REDACTED] and [REDACTED] died in the Philippines on September 6, 1977.

A copy of a marriage certificate reflecting that [REDACTED] son of [REDACTED] and [REDACTED] married [REDACTED] in Davao City, Philippines on June 17, 1950.

The AAO finds that the above evidence establishes that [REDACTED] was born in the U.S. and was a native U.S. citizen, and that the applicant's father [REDACTED] is his legitimate son [REDACTED] therefore derived U.S. citizenship at birth pursuant to section 1993 of the Revised Statutes.

The record contains no evidence to establish that [REDACTED] was physically present in the U.S. at any time during his life. However, the AAO notes that the Philippines were a U.S. outlying possession between April 1899 and July 1946. See Treaty of Peace with Spain of April 11, 1899 (Treaty of Paris) and Treaty of July 4, 1946, 61 Stat. 1174. The record contains the following evidence relating to [REDACTED] physical presence in a U.S. outlying possession (the Philippines) between December 13, 1915 and Philippine independence on July 4, 1946:

A copy of a Certificate of Baptism translated by the U.S. Veterans' Bureau, reflecting that [REDACTED] legitimate son of [REDACTED] and [REDACTED] born December 13, 1915 in Iloilo Philippines, was baptized on August 3, 1928, at the Roman Catholic Apostolic Church in Iloilo, Philippines.

A copy of a March 3, 1997, Certification from the Manila, Philippines Records Management and Archives Office reflecting that the 1915 Register of Births for the Municipality/City of Jaro, Iloilo, Philippines is not on file with the National Archives and that there is therefore no information about the birth of [REDACTED] alleged to have been born on December 13, 1915.

Copies of affidavits and U.S. Military Reserve Forces letters reflecting that [REDACTED] joined the guerilla forces and subsequently served in the U.S. Military Reserve Forces in the Philippines for four years between 1942 and 1945.

The AAO notes that the record also contains a November 28, 1979 letter from the U.S. Embassy in Manila, Philippines, reflecting that the applicant was approved for registration as a U.S. citizen, and that she obtained a U.S. passport on February 25, 1980, valid through February 24, 1985.

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. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. See *Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989).

The AAO finds that the cumulative evidence presented in the applicant's case establishes that [REDACTED]

██████████ was probably physically present in a U.S. outlying possession (the Philippines) for a period of ten years between December 13, 1915 and July 4, 1946, and that at least five years of physical presence occurred after December 13, 1929, when ██████████ turned fourteen. Accordingly, the AAO finds that the applicant has met her burden of establishing that she qualifies for U.S. citizenship under section 301(a)(7) of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.