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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: ANCHORAGE, ALASKA

Date:

MAR 24 2006

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

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

DISCUSSION: The application was denied by the District Director, Anchorage, Alaska, and the matter is now before the AAO on appeal. The appeal will be sustained.

The record reflects that the applicant was born on April 2, 1982 in American Samoa. The applicant's father, [REDACTED] was born in California on March 27, 1922, and he was a U.S. citizen. The applicant's mother was born in Western Samoa, and she is not a U.S. citizen. The applicant's parents married on November 14, 1977. The applicant presently seeks a Certificate of Citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), (now 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 U.S. citizen father.

The district director determined that the applicant had failed to establish her father was physically present in the United States for ten years prior to the applicant's birth, at least five years of which were after he turned fourteen, as required by section 301(a)(7) of the former Act.

On appeal, counsel asserts that the applicant has established by a preponderance of the evidence that her father [REDACTED] was physically present in the United States for the requisite period set forth in the former Act, and that the applicant acquired citizenship through her father pursuant to section 301(a)(7) 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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born in American Samoa in 1982. Section 301(a)(7) of the former Act therefore controls her citizenship claim.

Section 301(a)(7) of the former Act 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 [REDACTED] was physically present in the U.S. or its outlying possessions for a period of ten years between March 27, 1922 and April 2, 1982, at least five years of which occurred after March 27, 1936, when [REDACTED] turned fourteen.

It is noted that under section 101(a)(29) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(29), American Samoa is defined as an outlying possession of the United States.

The record contains the following evidence relating to [REDACTED] physical presence in the U.S. and American Samoa prior to the applicant's birth:

A California Certificate of Birth reflecting that [REDACTED] was born in Hermosa Beach, California on March 27, 1922.

California Divorce Complaint and Decree documents reflecting that [REDACTED] married [REDACTED] in California on December 20, 1957, and that they lived as husband and wife and acquired communal assets and debts until their divorce in Alameda, California on October 5, 1961.

A November 14, 1977 letter from the Government of American Samoa Immigration Division, stating that [REDACTED] arrived in American Samoa on June 26, 1977 and was authorized to remain in the country. The letter reflects that the applicant's mother, [REDACTED] is a citizen of Western Samoa, and that she arrived in American Samoa on November 11, 1977.

A marriage certificate reflecting that [REDACTED] and the applicant's mother were married in American Samoa on November 27, 1977. The marriage certificate reflects that Reverend [REDACTED] Minister of the [REDACTED] performed the marriage ceremony.

An American Samoa application for marriage license reflecting that [REDACTED] resided in Auto, American Samoa.

An April 1, 2004 letter signed by Pastor [REDACTED] stating that [REDACTED] served as a pastor at the Voice of Christ Full Gospel Church in San Francisco, California for over ten years and was then transferred to one of their church branches in Western Samoa in 1974. Pastor [REDACTED] states that he is a Minister with the Voice of Christ Full Gospel Church in Anchorage, Alaska and that he has access to the Voice of Christ Church files.

An undated supplemental letter signed by Reverend [REDACTED] stating that [REDACTED] was an ordained Minister with the Voice of Christ Full Gospel Church in San Francisco, California from January 10, 1964 to February 2, 1974. The letter states that [REDACTED] did not leave for any missions overseas until he was assigned to their church in Western Samoa on February 2, 1974.

A May 25, 2004 letter signed by Pastor [REDACTED] Senior District Pastor, Voice of Christ Full Gospel Church, San Francisco, California, stating that he served with [REDACTED] at their church in San Francisco from 1963 to 1974, and that Pastor [REDACTED] performed weekly duties at the church and did not travel outside of the country. He states that in 1974, he and [REDACTED] traveled to Western Samoa to dedicate a church. He states further that [REDACTED] worked at [REDACTED] in San Francisco at the same time he worked for the church, and that he occasionally picked [REDACTED] up from [REDACTED]. Pastor [REDACTED] additionally states that [REDACTED] had two sons named [REDACTED] and [REDACTED].

2000-2001, Nevada Court, Appointment of Guardianship records reflecting that [REDACTED] was cared for at the Fallon Convalescent Center, that he had a son named [REDACTED] and that he had [REDACTED] stock and Social Security civil service benefits.

A Certificate of Death reflecting that [REDACTED] died on September 14, 2000 at the Fallon Convalescent Center, and indicating that [REDACTED] business was with a public utility

and that his son is [REDACTED]

An obituary reflecting that [REDACTED] died at the Fallon Convalescent Center on September 15, 2000. The obituary states that [REDACTED] was a veteran who served in the Navy during World War II, that he was a retired accountant for [REDACTED] in California, and that his survivors include sons [REDACTED] and [REDACTED] of California.

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

The AAO finds that the totality of evidence contained in the record establishes that it is probably true that Mr. [REDACTED] was physically present in the U.S. and American Samoa for ten years between March 27, 1922 and April 2, 1932, and that five of those years occurred after March 27, 1936, when [REDACTED] turned fourteen. Accordingly, the AAO finds that the applicant has established, by a preponderance of the evidence, that [REDACTED] met the physical presence requirements set forth in section 301(a)(7) of the former Act. The appeal will therefore be sustained.

ORDER: The appeal is sustained.