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U.S. Citizenship  
and Immigration  
Services

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APR 18 2007

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

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

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The record reflects that the applicant was born in Valencia Carabobo, Venezuela on December 10, 1965. The applicant's father, [REDACTED] was born in Colombia to a U.S. citizen father and a Colombian mother. The applicant's mother was born in Caracas, Venezuela, and the applicant's parents were married on February 5, 1954 in Valencia Carabobo, Venezuela. 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), based on the claim that his father is a U.S. citizen, and that he acquired U.S. citizenship at birth through his father.

The director determined that the applicant was not a U.S. citizen pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because he failed to establish that he was a child residing in the United States in the legal and physical custody of a citizen parent and pursuant to a lawful admission for permanent residence. The application was denied accordingly. The director did not address the applicant's U.S. citizenship claim under section 301(a)(7) of the former Act.

On appeal the applicant asserts, through counsel, that his paternal grandfather was born in the United States and that U.S. citizenship was transmitted to his father at birth. The applicant asserts that the evidence in the record establishes he meets the requirements for transmission of U.S. citizenship through his father, pursuant to section 301(a)(7) of the former Act, and the applicant asks that his Form N-600, Application for Citizenship be approved accordingly.

The AAO notes that the Child Citizenship Act of 2000 (CCA) amended sections 320 and 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1431 and 1433, as of February 27, 2001. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18, on February 27, 2001, he is not eligible for consideration under the benefits of sections 320 and 322 of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001.) It is noted that section 321 of the former Act, 8 U.S.C. § 1432, was repealed on February 27, 2001, however, all persons who became U.S. citizens automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, *supra*.

Section 321 of the former Act, states, 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 evidence in the record fails to establish that either of the applicant's parents became naturalized U.S. citizens, or that the applicant resided in the U.S. pursuant to a lawful admission for permanent residence prior to his 18<sup>th</sup> birthday. Accordingly, the applicant does not qualify for consideration under section 321 of the former Act.

For the reasons set forth below, the AAO finds that the applicant's father was a U.S. citizen at birth. Accordingly, the applicant's U.S. citizenship claim must be assessed under section 301 of the former Act acquisition of citizenship provisions.

The record contains a September 25, 1936, American Consular, Record of Birth of a Child Born Abroad of an American Father, reflecting that the applicant's paternal grandfather [REDACTED] was born in New York, New York and was a native born U.S. citizen. The Consular Record of Birth reflects further that the applicant's father, [REDACTED] was born in Colombia on March 17, 1929, to [REDACTED] and [REDACTED] (a Colombian citizen).

"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's father was born on March 17, 1929. Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1933) is therefore applicable in determining whether U.S. citizenship was transmitted at birth to the applicant's father.

R.S. section 1993 provides that a child:

[B]orn out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

Pursuant to the provisions of R.S. section 1993, the applicant must thus establish that his paternal grandfather resided in the United States prior to the applicant's father's [REDACTED] birth. Citizenship provisions contained in the Act of February 10, 1885, 10 Stat. 604 reflect that a child born abroad to a U.S. citizen father is a U.S. citizen, provided the father resided in the U.S. at one point in his life. In *Matter of V*, 6 I&N Dec. 1,5 (A.G. 1954), the Attorney General found that a minor's brief residence within the United States satisfied the residence requirements of R.S. section 1933. *See also, State ex rel. Phelps v. Jackson*, 79 Vt. 504, 519 (1907). The present record reflects that the applicant's paternal grandfather was a U.S. citizen born in New York. Based on the provisions of the Act of February 10, 1885, and the holding in *Matter of V*, the AAO finds that the applicant's paternal grandfather's birth in the United States establishes that he resided briefly in the U.S. at some point prior to [REDACTED] birth. The applicant's paternal grandfather therefore met U.S. residence requirements as set forth in R.S. section 1993. Accordingly, the AAO finds that the applicant established that his father, [REDACTED], was born a U.S. citizen.

As previously noted, “[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, supra*. The applicant was born on December 10, 1965. Section 301(a)(7) of the former Act is therefore applicable to the applicant’s acquisition of citizenship claim.

Section 301(a)(7) of the former Act provides 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 . . . 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 . . . 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 order to satisfy the requirements set forth in section 301(a)(7) of the former Act, the applicant must thus establish that his father was physically present in the U.S. for ten years between March 17, 1929 and December 10, 1965, and that five of those years occurred after March 17, 1943, when his father turned fourteen.

The evidence relating to [REDACTED] physical presence in the United States during the above time period consists of the following documents:

A Certification of Military Service reflecting that [REDACTED] was a member of the U.S. Army from May 25, 1946 to September 28, 1947.

A U.S. Department of Veteran’s Affairs letter reflecting that the applicant’s mother receives surviving spouse VA pension benefits based on [REDACTED]’s previous military service.

It is noted that the birth, marriage and death certificate evidence submitted by the applicant establish [REDACTED]’s physical presence in Venezuela, rather than in the United States.

Upon review of the evidence, the AAO finds that the applicant has established by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for a period of 1 year and 4 months between May 1946 and September 1947. The applicant has failed to establish that his father was physically present in the United States for ten years prior to the applicant’s birth, as required under section 301(a)(7) of the Act.

The regulations provide at 8 C.F.R. § 341.2(c), 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 not met his burden in the present matter. The appeal will therefore be dismissed and the application denied.

**ORDER:** The appeal is dismissed. The application is denied.