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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[Redacted]

FILE: [Redacted]

Office: CHICAGO, IL

Date: MAY 03 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application Certificate of Citizenship under Section 1993 of the Revised Statutes of the United States, 1878, as amended by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797.

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on August 20, 1935, in the Philippines. The applicant's father, [REDACTED], was born in the Philippines on October 28, 1891. The applicant's mother, [REDACTED] was born in the Philippines on March 16, 1904. The applicant's parents were married on January 24, 1925. The applicant seeks a certificate of citizenship pursuant to section 1993 of the Revised Statutes of the United States, 1878, as amended by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797 (Section 1993 of the Revised Statutes, as amended), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director determined that the applicant did not qualify for U.S. citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, because he failed to establish that both of his parents became naturalized U.S. citizens. The district director determined further that the applicant did not qualify for citizenship under section 320 of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1431 because he failed to establish that his father was a naturalized U.S. citizen, and because he was over the age of eighteen on February 27, 2001, when the provision went into effect. The district director additionally determined that the applicant did not qualify for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401 because he failed to establish that his father was a U.S. citizen at the time of his birth. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that he is not claiming U.S. citizenship under section 321 of the former Act, or sections 320 and 301(g) of the Act, as amended. Rather, the applicant asserts that his claim for citizenship is based on provisions contained in section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934. The applicant asserts that the evidence in the record establishes his father became a naturalized U.S. citizen prior to 1920 and prior to the applicant's birth. The applicant asserts further that he and his father met the U.S. residence requirements for transmission of U.S. citizenship to the applicant under section 1993 of the Revised Statutes, as amended.

The AAO notes that section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001.¹ The provisions of the CCA are not retroactive and the amended provisions of section 320 of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the

¹ Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

age of eighteen on February 27, 2001, he is not eligible for consideration under section 320 of the Act. Section 321 of the former Act was repealed by the CCA. However, all persons who acquired citizenship 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 record reflects that the applicant's parents were married and that they did not become legally separated. The applicant's mother did not become a naturalized U.S. citizen as required by section 321(a)(1) of the former Act. The record additionally contains no indication that the applicant resided in the United States pursuant to a lawful admission for permanent residence prior to his eighteenth birthday. Accordingly, the applicant does not meet the requirements for citizenship under 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 (9th Cir. 2000) (citations omitted). The applicant was born in the Philippines on August 20, 1935. Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, therefore applies to his transmission of citizenship claim.²

Section 1993 of the Revised Statutes, as originally enacted, applies to children born abroad to U.S. citizens prior to May 24, 1934, and states that:

² It is noted that the provisions contained in section 301(g) of the Act apply to children born abroad to a U.S. citizen parent, after November 13, 1986.

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.

Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, did not change the original requirements set forth above. The Act of May 24, 1934 did, however, amend section 1993 of the Revised Statutes to include the requirement that a child of a U.S. citizen must reside in the United States for five years prior to reaching the age of eighteen, and must take an oath of allegiance within six months of his or her twenty-first birthday, in order to acquire U.S. citizenship. It is noted that U.S. laws passed subsequent to the passage of the Act of May 24, 1934, retroactively liberalized the child retention of citizenship requirements mentioned above, and included a retroactive exemption of retention of citizenship requirements, for the child of a U.S. citizen parent who worked abroad for the U.S. government prior to the child's birth. See Section 201(g) and (h) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137.

In the present matter, the evidence relating to the applicant's father's (Mr. ██████████) residence and status as a U.S. citizen prior to the applicant's birth consists of the following:

A U.S. Declaration of Intention signed in Hawaii on October 4, 1916, by Mr. ██████████ and the Clerk of the U.S. District Court, reflecting Mr. ██████████'s residence in Honolulu, Hawaii, and his intent to become a naturalized U.S. citizen.

A U.S. Naval Enlistment Record, dated December 3, 1920, reflecting that on November 14, 1916, Mr. ██████████ enlisted in the U.S. Navy at Honolulu, Hawaii for four years, and reflecting that Mr. ██████████ was paid for mileage from San Diego, California to San Francisco, California. The Enlistment Record reflects further Mr. ██████████ "N.U.S." citizenship status.

A U.S. General Services Administration, "Statement of Service" reflecting that Mr. ██████████ served actively in the U.S. Navy between November 14, 1916 and April 15, 1933, and that he permanently retired on January 1, 1947.

A July 6, 1931, U.S. Naval Memorandum reflecting that Mr. ██████████ served on the U.S.S. Rizal, San Diego, California.

A U.S. Naval, "Continuous Service Certificate" reflecting that Mr. ██████████ was in New York, New York between June 30, 1918 and July 27, 1918, and reflecting that Mr. ██████████ attended Naval Training Camp in Detroit, Michigan between July 8 and 14, 1919; August 18 and 21, 1919; September 29 and October 1, 1919; and October 29 and 31, 1919. The Certificate reflects further that Mr. ██████████ was in San Francisco, California on February 21, 1921 and March 31, 1921.

The regulation states 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. 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 Mr. ██████████'s October 4, 1916, U.S. Declaration of Intention to become a U.S. citizen, combined with the U.S. Navy's indication that Mr. Manalang became a "N.U.S." -

presumably meaning a naturalized U.S. citizen - establishes by a preponderance of the evidence that Mr. [REDACTED] was a naturalized U.S. citizen prior the applicant's birth in 1935. The AAO finds further that a review of immigration law and changes made since the passage of the Act of May 24, 1934, demonstrates that the applicant is exempt from the requirement that he reside in the United States for five years prior to his eighteenth birthday, and take an oath of allegiance prior to his twenty first birthday, in order to acquire U.S. citizenship under section 1993 of the Revised Statutes, as amended.

The applicant asserts, through counsel that his father satisfies the U.S. residence requirement contained in section 1993 of the amended Revised Statute because Mr. [REDACTED] resided in the Philippines when it was a U.S. territory, and because Mr. [REDACTED] served actively in the U.S. Navy from 1916 to 1933. In support of his assertion, the applicant refers to the Board of Immigration Appeals case, *Matter of V-*, 9 I&N Dec. 558 (BIA 1962), which held that for section 201(g) of the Nationality Act, 8 U.S.C. § 601(g), and section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) purposes, residence in the Philippine Islands while it was a U.S. territory constituted residence in an outlying possession of the United States.

The evidence contained in the record reflects that Mr. [REDACTED] resided in the Philippines and in Hawaii prior to the applicant's birth. The Philippine Islands were a U.S. territory between 1899 and 1946. *See* Act of July 1, 1902, 32 Stat. 692, as amended. Hawaii became a U.S. territory in 1898, and did not become a U.S. state until 1959. *See* <http://www.state.gov/r/pa/ho/time/gp/17661.htm>. The applicant therefore established that Mr. [REDACTED] resided in a U.S. territory or outlying possession prior to the applicant's birth.

The AAO notes that section 201(g) of the Nationality Act and section 301(a)(7) of the former Act contain provisions that explicitly allow for acquisition of U.S. citizenship where the U.S. citizen parent either resided in the U.S. or a U.S. outlying possession for a specified period of time.³ Unlike section 201(g) of the Nationality Act, or section 301(a)(7) of the former Act, however, section 1993 of the Revised Statutes, as originally enacted, and as amended, does not contain a "residence in U.S. outlying possession" provision for transmission of citizenship purposes. Furthermore, *Friend v. Reno*, 172 F.3d 638, 648 (9th Cir. 1999), held that the definition of "United States" for section 1993 Revised Statutes purposes did not include an outlying

³ Section 201(g) of the Nationality Act stated in pertinent part 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. . . .

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

possession such as the Philippines. *Friend* additionally held that, “[r]esidence in the Philippines during its territorial period does not qualify as residence “in the United States” under Rev. Stat. § 1993.” Accordingly, the AAO finds that the applicant failed to establish that his father’s residence in U.S. territories prior to his birth constituted residence in the United States for section 1993 of the Revised Statutes, as amended purposes.

Despite of the above findings, however, the AAO finds that the record nevertheless establishes by a preponderance of the evidence that the applicant’s father satisfied the U.S. residence requirement contained in section 1993 of the Revised Statutes, as amended. *Matter of V-*, 6 I&N Dec. 1, Interim Decision 670, (BIA, Atty.Gen. 1953)⁴, essentially held that any amount of physical presence in the United States qualified as residence for purposes of section 1993 of the Revised Statutes. The decision indicated that the intent or purpose of a U.S. citizen parent’s physical presence in the United States was not material, and that the relevant matter for residence purposes was that the U.S. citizen parent was present in the United States, even if only briefly, prior to the child’s birth. The present record reflects that while Mr. [REDACTED] served in the U.S. Navy, he was physically present in New York, Michigan and California prior to the applicant’s birth. The applicant has thus established that his father satisfied the residence requirements set forth in section 1993 of the Revised Statutes, as amended.

The AAO finds that the applicant has met his burden of establishing that his father became a naturalized U.S. citizen prior to the applicant’s birth, and that his father resided in the U.S. prior to the applicant’s birth, as required by section 1993 of the Revised Statutes, as amended. Accordingly, the applicant has established that he acquired U.S. citizenship at birth through his father. The appeal will therefore be sustained, and the application approved.

ORDER: The appeal is sustained. The application is approved.

⁴ It is noted that this is not the same *Matter of V-* decision referred to by counsel