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

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FILE: [REDACTED] Office: BUFFALO, NY Date: MAY 09 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 301(a)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(3), as amended.

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.

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 District Director, Buffalo, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 31, 1960 in Canada. The applicant's mother and father, also born in Canada, both automatically acquired U.S. citizenship at birth. The applicant's parents married on October 22, 1949. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen parents.

In that the applicant was born in 1960, he must establish his claim to U.S. citizenship under section 301(a)(3) of the 1952 Immigration and Nationality Act (the Act), as amended, the applicable immigration statute in effect in 1960.

Section 301(a)(3) of the Act, 8 U.S.C. § 1401(a)(3),¹ stated that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside of the United States . . . of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

The district director found the evidence of record insufficient to establish that, prior to the applicant's birth, either of his parents had resided in the United States. She noted the affidavits sworn by the applicant's parents and the photographs submitted as proof of their time in the United States but did not find this documentation to establish their U.S. residence. Accordingly, she denied the Form N-600, Application for Certificate of Citizenship.

On appeal, the applicant contends that for a brief time in 1955, his parents' place of residence was the United States and that he is, therefore, eligible for U.S. citizenship. The applicant asserts that his parents' residence in the United States prior to his birth is "at least equal in significance" to that in *Garlasco v. Dulles*, 243 F.2d 679 (2nd Cir. 1957) and that the evidence of that residence is comparable to that of *Alvarez-Garcia v. Ashcroft*, 293 F.3d 1155 (9th Cir. 2002).

The AAO notes that, in general, the provisions of the Act relating to U.S. citizenship acquired at birth outside the United States impose physical presence requirements on the parents of applicants. However, as noted above, the language of section 301(a)(3) of the Act required an applicant to establish a parent's *residence* in the United States. Initially defined by section 104 of the Nationality Act of 1940, as "the place of general abode," the definition of residence was expanded upon by the 1952 Act, which identified residence as:

the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. [Section 101(a)(33) of the Act, 8 U.S.C. § 1101(c).]

Accordingly, the issue before the AAO is whether the record establishes that prior to his January 31, 1960 birth, one of the applicant's U.S. citizen parents had a residence in the United States, as defined by the 1952 Act. To satisfy the residence requirement of section 301(a)(3) of the 1952 Act, the applicant must establish

¹ Now section 301(c) of the Act, 8 U.S.C. § 1401(c).

that his parents' time in the United States consisted of more than a temporary residence, that during their trip to the United States in April 1955 they established a principal place of dwelling. In *Savorgnan v. United States*, 338 U.S. 491, 505 (S.C. 1950), the Supreme Court has also interpreted residence as the principal dwelling place of a person without regard to intent.

To establish the U.S. residence of his parents, the applicant has submitted affidavits from his parents, his maternal grandmother and the owner of the Royal Motel in Omak, Washington; and photographs of his parents' travel in the United States during 1955, as identified by his mother.

The affidavit sworn by the applicant's father on December 30, 2004 indicates that he was physically in the United States for a few days in the years 1947 and 1948; traveled through Detroit, Michigan and Minnesota in December 1953, commuting by bus for work-related education courses; and on April 7, 1955 traveled to Spokane, Washington with the applicant's mother where they stayed for a "short time," sleeping in their car and staying in motels. The affidavit provided by the applicant's mother reports that she and her husband traveled to the United States in April 1955, living out of their car and staying in motels when financially possible. The applicant's mother indicates that while in the United States, she and the applicant's father lived in the states of Washington, Idaho and Montana, and that they arrived in the United States intending to stay in either Washington or Idaho for the foreseeable future. A change of plans resulted in their return to Saskatchewan on or before April 20, 1955, a date fixed by the photograph of the applicant's parents and his maternal great grandparents, which the applicant's mother indicates was taken on April 20, 1955 in Saskatchewan.

In support of his parents' statements, the applicant has submitted an affidavit from his maternal grandmother stating that her daughter and son-in-law traveled to the United States in April 1955 and lived in Washington, Idaho and Montana before they returned to Canada. He has also provided an affidavit from [REDACTED] the current owner of the [REDACTED] in Omak, Washington, the motel where the applicant's parents indicate they stayed their first night in the United States. Ms. [REDACTED] attests that the photograph of the motel submitted by the applicant is the [REDACTED] that she now owns with her husband. The applicant has also submitted several photographs that he identifies as having been taken during his parents' time in the United States, including photographs of his mother standing in front of his parents' car in Great Falls, Montana; his parents' car in front of the motel identified by Ms. [REDACTED] as the [REDACTED] in Omak, Washington; his mother at the United States-Canadian border; his mother and father at the United States-Canadian border; his mother and father in front of a motel in Spokane, Washington; and his father and uncle at the United States-Canadian border.

Having reviewed the above evidence, the AAO does not find it to establish that either of the applicant's parents established a residence in the United States prior to his birth, as residence is defined by the 1952 Act. Although the AAO notes that the applicant's father indicates that he was twice in the United States prior to 1955, the record offers no proof to support his claims regarding these earlier visits. Mr. and Mrs. [REDACTED] claims of a 1955 trip to the United States are supported by the affidavit sworn by Mrs. [REDACTED] mother and the photographs previously discussed. While the AAO finds this evidence sufficient to prove that the applicant's parents were physically present in the United States prior to his January 31, 1960 birth, it does not establish U.S. residence for the purposes of section 301(a)(3) of the Act.

On appeal, the applicant claims that the evidence of record is sufficient to meet his burden of proof in terms of his parent's U.S. residence, pointing to the dissenting opinion in *Alcaarez-Garcia v. Ashcroft*, 293 F.3d 1155

(9th Cir. 2002), which raises concerns about the lack of documentation submitted to establish the U.S. residence of the appellant's father. He contends that the evidence of residence in the present case is "at least equal in significance" to that provided in *Alcaarez-Garcia* and submits a copy of the decision. The AAO notes, however, that *Alcaarez-Garcia* indicates that the evidence of record established that for a period of nine years, 1943 to 1952, the appellant's father worked on the same farm in Texas for nine months of each year, although the dissenting opinion found this location, as it was not identified by a street address, specific farm, hotel or even a locality, to be too indeterminate to support a finding of residence. In the present case, the record, except for the nights spent at what is now the Royal Motel in Omak, Washington and an unidentified motel in Spokane, Washington, fails to establish where Mr. and Mrs. ██████ spent their two weeks in the United States. Moreover, Mr. and Mrs. ██████ indicate they spent their time in the United States traveling through Washington, Idaho and Montana, not at a fixed location like the appellant in *Alcaarez-Garcia*. Accordingly, the AAO does not find the evidence of residence submitted by the applicant to be comparable to that presented in *Alcaarez-Garcia*.

The applicant makes a similar assertion regarding the length of his parents' visit to the United States and that of the appellant in *Garlasco v. Dulles*, 243 F.2d 679 (2nd Cir. 1957), where the 2nd Circuit Court of Appeals affirmed a U.S. district court decision that found the appellant's 2 ½ month stay in a New York hotel to be sufficient to establish it as his principal place of abode. However, as previously noted, the record in the present case fails to establish that the applicant's parents were at any specific location in the United States for more than one night. Their itinerant stay in the United States cannot be compared to the appellant in *Garlasco v. Dulles* who established a 2 and ½ month presence at one New York hotel.

The applicant's parents state that between April 7, 1955, the date on which they left Canada, and April 20, 1955, when the applicant's mother asserts they were photographed with her paternal grandparents following their return to Canada, they traveled in Washington, Idaho and Montana, sleeping in their car or motels. Their statements describe a temporary visit to the United States, despite the applicant's assertions to the contrary. Traveling in the United States is not synonymous with residing in the United States, despite the assertions made by the applicant's mother that she and the applicant's father entered the United States intending to stay for the "foreseeable future." As previously noted, however, the definition of residence is based on objective fact and intent is not relevant to a determination of residence. *See Savorgnan v. United States, supra*. The affidavits sworn by the applicant's parents do not establish that while in the United States they had a principal, actual dwelling place, as required for the applicant to acquire U.S. citizenship under section 301(a)(3) of the 1952 Act.

For the reasons discussed above, the AAO finds the record to contain insufficient evidence to establish that, prior to the applicant's birth, either of his parents had a residence in the United States, as required by section 301(a)(3) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in this proceeding.

ORDER: The appeal is dismissed.