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U.S. Citizenship  
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Services

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FILE:  Office: LOS ANGELES, CA Date: **NOV 09 2007**

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under section 301 of the 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Los Angeles, California on April 16, 2003, and the matter was appealed to the Administrative Appeals Office (AAO). The AAO remanded the matter to the district director on January 10, 2005, for further consideration. The district director re-denied the application on August 30, 2007. The matter is presently certified to the AAO for review. The decision of the district director will be affirmed and the application denied.

The record reflects that the applicant was born on January 5, 1967, in the Philippines. The applicant's father, [REDACTED] was born in the Philippines on August 21, 1927. He acquired U.S. citizenship at birth through the applicant's U.S. citizen, paternal grandfather. The applicant's mother, [REDACTED] was born in the Philippines and is not a U.S. citizen. The applicant's parents married on March 10, 1961, in the Philippines. The applicant 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 he acquired U.S. citizenship at birth through his father.

In a decision dated April 16, 2003, the district director determined that the evidence in the record contained material discrepancies, and that the applicant had failed to establish who his paternal grandfather was, or that his father was a U.S. citizen. The district director concluded that the applicant had thus failed to establish by a preponderance of the evidence, that he was a U.S. citizen under section 301(a)(7) of the Act. The application was denied accordingly. The AAO determined on appeal that the applicant had established, by a preponderance of the evidence, that his paternal grandfather was a U.S. citizen and that the applicant's father [REDACTED] had acquired U.S. citizenship pursuant to the Act of February 10, 1885, 10 Stat. 604, which states 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. The AAO determined further, however, that neither the district director's decision nor the applicant's appeal addressed [REDACTED] physical presence requirements under section 301(a)(7) of the former Act. Accordingly, the AAO remanded the matter to the district director for consideration of the issue. On remand, the district director reviewed all evidence pertaining to [REDACTED] physical presence in the United States or its outlying possessions, prior to the applicant's birth, including new affidavits submitted subsequent to the AAO decision. The district director determined that the evidence failed to demonstrate that the applicant's father met the physical presence requirements set forth in section 301(a)(7) of the former Act. The application was denied accordingly, and the matter was certified to the AAO for review.

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 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. . . .

In the present matter, the applicant must establish by a preponderance of the evidence that his father was physically present in the U.S. or its outlying possessions for ten years between August 21, 1927, and January 5, 1967, at least five years of which occurred after August 21, 1941, when [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED] physical presence during the relevant time period:

██████████ U.S. passport, issued on February 4, 1982, reflecting that he was born in the Philippines on August 21, 1927.

██████████ Certificate of Birth reflecting that he was born in the Philippines on August 21, 1927.

██████████ marriage certificate reflecting that he married the applicant's mother, ██████████ in the Philippines on March 10, 1961.

A declaration signed by the applicant's mother on May 25, 2007, stating in pertinent part that: ██████████ was born and raised in the Philippines by his parents; some time after completing his U.S. military service in the Philippines, the applicant's paternal grandfather returned to the U.S. with his family, including ██████████ and ██████████ lived with his family in the U.S. until the applicant's paternal grandfather passed away in California on March 22, 1951, at which time ██████████ returned with his mother to the Philippines.

Upon thorough review of the evidence, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States or its outlying possessions for ten years prior to the applicant's birth, at least five of which occurred after ██████████ turned fourteen years old. ██████████ passport, birth certificate and marriage certificate evidence demonstrate no physical presence in the United States or its outlying possessions. The AAO notes further that the statements made in the applicant's mother's declaration are not based on her personal knowledge of the events. Moreover, the statements are vague and uncorroborated by independent evidence.

The regulation provides 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 failed to meet his burden of proof in the present matter.

**ORDER:** The district director's decision is affirmed. The application is denied.