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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: YAKIMA, WA

Date: NOV 29 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Sections 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g).

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Yakima, Washington, 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 June 4, 1989 in England. The applicant's mother, [REDACTED], was born on January 28, 1956 in Lincoln, Nebraska. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant's parents were divorced in 1995, and the applicant's mother has since married [REDACTED]. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish eligibility under sections 301(g) or 320 of the Act, 8 U.S.C. §§ 1401(g) or 1431. The application was accordingly denied.

On appeal, the applicant seeks reconsideration of the decision in his case on the basis of his grandfather's service in the U.S. Armed Forces and his brother's approved citizenship claim. The applicant submits a copy of his grandfather's Form DD-214, Armed Forces Report of Transfer of Discharge.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1989.

Section 301 of the Act, 8 U.S.C. § 1401, provides, in relevant part, that the following shall be nationals and citizens of the United States at birth:

(g) 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 five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods . . . during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person . . . honorably serving with the Armed Forces of the United States . . . may be included in order to satisfy the physical presence requirement of this paragraph.

In order to acquire U.S. citizenship under this provision, the applicant must establish that his mother was present in the United States for a period of five years prior to 1989, at least two of which were after she attained the age of 14 (in 1970).

The applicant has established that his mother is a native-born U.S. citizen who was physically present in the United States for more than 5 years before the applicant's birth. The AAO includes the years 1955 to 1959 when calculating the applicant's mother's physical presence in the United States because she was then a dependent of a member of the Armed Forces serving honorably overseas. The applicant's mother turned 14 years old on January 28, 1970. There is no evidence in the record to suggest that the applicant's mother was physically present in the United States at any time between 1970 and 1989. Therefore, the applicant has

failed to establish, by a preponderance of the evidence, that his mother was physically present in the United States for two years after her 14<sup>th</sup> birthday. The applicant thus did not acquire U.S. citizenship at birth under section 301 of the Act, 8 U.S.C. § 1401.

The AAO notes that section 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA). These amendments took effect on February 27, 2001 and benefit all persons, such as the applicant, who had not yet reached their 18th birthdays. The applicant's 18<sup>th</sup> birthday was on June 4, 2007. The applicant did not acquire U.S. citizenship under section 320 of the Act (because he was not admitted as a lawful permanent resident before reaching the age of 18) or under section 322 of the Act (because, among other things, he was residing in the United States).

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant's mother was not physically present in the United States for the required two years after attaining the age of 14, but prior to the applicant's birth. Therefore, the AAO must conclude that the applicant did not acquire U.S. citizenship and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.