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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:



Office: SEATTLE, WA (YAKIMA)

Date:

NOV 29 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 201(c) of the Nationality Act of 1940; 8 U.S.C. § 601(c).

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Seattle, Washington (Yakima), 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 September 16, 1952 in Canada. The applicants' parents are [REDACTED]. The applicant's parents acquired U.S. citizenship at birth through the applicant's grandparents. The applicant's parents were married on December 24, 1942. The applicant presently seeks a certificate of citizenship under section 201(c) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(c), based on the claim that he acquired U.S. citizenship at birth through his parents.

The district director determined the applicant had failed to establish that his parents had resided in the United States prior to the applicant's birth. The application was denied accordingly. On appeal, the applicant asserts that "the residence requirement may be waived in cases where the US citizen parent (in this case both parents) were unaware of their own citizenship status within the timeframe necessary to fulfill the residency requirement." *See* Statement of the Applicant dated March 3, 2006. The applicant submits an affidavit executed by his uncle verifying that the applicant's father was physically present and resided in the United States during a period in the late 1930's.

"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 Nationality Act of 1940 was in effect at the time of the applicant's birth. The statutory provisions set forth in section 201(c) of the Nationality Act therefore apply to the applicant's citizenship claim.

Section 201(c) of the Nationality Act states that:

a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions prior to the birth of such person

In the present matter, the applicant must therefore establish that his parents are U.S. citizens and that one of them resided in the United States anytime prior to 1952.

In the statement accompanying the applicant's Form N-600, Application for Certificate of Citizenship, the applicant contends that his parents were prevented from residing in the United States by the actions of U.S. government officials at the U.S. consulate in Calgary, Canada in 1961. According to the applicant, the Calgary consular officials issued immigrant visas to the applicant's family in 1961, and his parents did not discover their claim to U.S. citizenship until 1986. The AAO finds the applicant's contentions in this regard to be irrelevant to his claim to U.S. citizenship. The applicant was born in 1952. His parents residence in 1961 or thereafter is therefore not at issue in this case.

The AAO further finds the applicant's "constructive residence" assertions in general to be unpersuasive. In *Wong Gan Chee v. Acheson*, 95 F. Supp. 816, 817 (N.D. Cal. 1951), the U.S. District Court held that for section 201(g) of the Nationality Act purposes, "[t]he term "residence" . . . is entitled to a broad and liberal

construction. It need not be actual nor continuous, nor does it require physical presence during the full statutory period.” In *Drozod v. INS*, 155 F.3d 81, 87 (2nd Cir. 1998), however, the Second Circuit Court of Appeals made clear that the principle of constructive residence applies only to cases involving *retention* of citizenship, and that the principle does not apply to the *transmission* of citizenship. The Circuit Court of Appeals clarified further that legal “[c]ases have rejected the argument that statutory requirements to transmit citizenship can be constructively satisfied”, and that “[t]he application of constructive residence was inappropriate in a citizenship transmission case.” *Id.* (citations and quotations omitted).

In *Savorgnan v. United States*, 338 U.S. 491, 505, (1950) the U.S. Supreme Court defined the term “residence” as the principal dwelling place of a person, or their actual place of general abode, without regard to intent. The Ninth Circuit Court of Appeals additionally held in *Alvarez-Garcia v. Ashcroft*, 293 F. 3d 1155, 1157 (9th Cir. 2002), that when determining the issue of residence, “[t]he inquiry is one of objective fact, and one’s intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material.” (citations and quotations omitted).

The AAO finds that the applicant has failed to establish that his father resided in the United States prior to 1952. The evidence in the record, namely the applicant’s uncle’s affidavit, indicates that the applicant’s father “was physically present and resided in the United States in the late 1930’s.” See Statutory Declaration of Evan Dehlin Erickson at ¶ 2. Other evidence in the record suggests that the applicant’s parents visited the United States on occasion prior to the applicant’s birth in 1952, but that they never “resided” in the United States. The AAO finds that the cumulative evidence submitted by the applicant does not establish that it is more likely than not that either of his parents resided in the United States prior to 1952.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts ‘should be resolved in favor of the United States and against the claimant.’” *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has failed to establish that either of his parents resided in the United States prior to 1952. Accordingly, the applicant is not eligible for citizenship under section 201(c) of the Nationality Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.