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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 08 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601.

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.

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Italy on April 30, 1948. The applicant's parents, as listed on his birth certificate, are [REDACTED]. The applicant's mother was born in Rhode Island on October 27, 1913. The applicant's father, now deceased, was not a U.S. citizen. The applicant's mother resided in the United States from birth until July 1923, and since 1956. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth under section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601.

The director denied the application for certificate of citizenship finding that the applicant had failed to establish that his mother had the required residence in the United States.

On appeal, the applicant, through counsel, submits additional evidence and a brief. The applicant maintains, in relevant part, that his mother was prevented from returning to the United States because the immigration quotas applicable at the time forbid her husband, the applicant's father, from immigrating to the United States. Thus, the applicant claims that his mother constructively met the physical presence requirements of the Nationality 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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1948. The Immigration and Nationality Act went into effect on December 24, 1952. The Nationality Act is therefore applicable in this case.

Section 201(g) of the Nationality Act states 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: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.<sup>1</sup>

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<sup>1</sup> Section 201(h) of the Nationality Act further states that "[t]he foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to [REDACTED]"

In the present matter, the applicant must therefore establish that his mother resided in the U.S. or its outlying possessions for ten years between October 27, 1913 and the date of the applicant's birth [REDACTED] and that five of those years occurred after October 27, 1926, when the applicant's mother turned 16 years old. The applicant admits that his mother resided in the United States only from 1913 until 1923, and from 1956 to the present. The applicant maintains, however, that she was prevented from returning by an unlawful law that restricted her husband's (the applicant's father) immigration.

The AAO finds counsel's constructive residence assertions 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 *Matter of Navarrete*, 12 I&N Dec. 138 (BIA 1967), the Board of Immigration Appeals held that parent who had been prevented from entering the United States by an erroneous interpretation of the law regarding her nationality would be deemed to have been physically present for the period required for her transmission of U.S. citizenship to her children. The AAO notes that the applicant's mother was not prevented from entering the United States, nor was her nationality claim questioned by the government. The applicant's mother remained abroad with her husband by choice, not due to an erroneous interpretation of the law regarding her citizenship. In *Drozod v. INS*, 155 F.3d 81, 87 (2<sup>nd</sup> Cir. 1998), moreover, 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 *Rodriguez-Romero v. INS*, 434 F.2d 1022 (9<sup>th</sup> Cir. 1970), the Ninth Circuit Court of Appeals noted that while the residence requirement can be satisfied despite short absences, residence abroad without maintaining an abode in the United States cannot be deemed to be "residence" for transmission of citizenship purposes. *See also* 7 FAM 1134.2-2(d). The applicant's mother did not maintain an abode in the United States between 1923 and 1956. Therefore, the applicant cannot establish that his mother resided in the United States for the required five years between 1926 (her 16<sup>th</sup> birthday) and the applicant's birth (in 1948).

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. 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 AAO notes further that it is without authority to apply equitable doctrines in this or any other case. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991) (stating that the AAO, like the Board of Immigration Appeals, is “without authority to apply the doctrine of equitable estoppel against the Service so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation”). The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at 8 C.F.R. § 103.1(f)(3)(iii), as in effect on February 28, 2003. *See* DHS Delegation Memorandum Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003).

8 C.F.R. § 341.2(c) provides that 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 in this case has not met his burden of proof. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.