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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*Er*

[REDACTED]

FILE:

[REDACTED]

OFFICE: NEW YORK, NY

Date:

**MAY 15 2008**

IN RE:

APPLICANT:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7).

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The record reflects that the applicant was born in Yemen on February 9, 1986. She turned eighteen on February 9, 2004. The record indicates that the applicant's parents married on September 5, 1982. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's father was born in Yemen on May 12, 1941. He became a naturalized U.S. citizen on January 29, 1980. The applicant's father died on July 3, 1996. The applicant presently seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her father under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)).

The district director determined that, in spite of U.S. Citizenship and Immigration Services (CIS) requests for evidence, the applicant had failed to present sufficient evidence establishing that her father [REDACTED] was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after [REDACTED] reached the age of fourteen, as required by the former Act. The N-600 application was denied accordingly.

On appeal the applicant indicates, through counsel, that new U.S. Social Security Administration (SSA) yearly earnings evidence establishes that [REDACTED] meets the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act. The applicant refers to evidence contained in the record that documents efforts to obtain her deceased father's SSA earnings statement prior to the issuance of the district director's decision in her case. The applicant also refers to letters contained in the record, documenting the SSA's refusal to provide such evidence absent a direct request from CIS. The applicant submits new SSA earnings evidence on appeal, and she asserts through counsel, that the Social Security Administration gave her with the requested evidence only after she provided them with a copy of the denial of her N-600 application.

Given the circumstances surrounding the applicant's previous inability to obtain her father's SSA evidence, the AAO will accept the new evidence on appeal.

"[T]he 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.) In the present matter, the applicant was born in Yemen in 1986. Section 301(a)(7) of the former Act therefore applies to her acquisition of citizenship claim.

Section 301(a)(7) of the former Act states 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 . . . 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 . . . 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 order to qualify for citizenship under section 301(a)(7) of the former Act, the applicant must establish that her father was a U.S. citizen, that he was physically present in the U.S. for ten years prior to the applicant's birth on February 9, 1986, and that at least five years of physical presence occurred after May 12, 1955, when turned fourteen.

The record contains a U.S. Certificate of Naturalization reflecting that [REDACTED] became a naturalized U.S. citizen on January 29, 1980, at the age of thirty-eight. The applicant therefore established that her father was a U.S. citizen at the time of her birth in February 1986.

The record contains the following evidence pertaining to [REDACTED]'s physical presence in the United States prior to the applicant's birth:

An SSA earnings statement for [REDACTED] Social Security Number, [REDACTED] reflecting yearly U.S. earnings for ten years between 1973-1983.

1976-1983, New York State and U.S. Federal income tax returns filed by [REDACTED] Social Security Number [REDACTED]

A Certificate of Naturalization containing [REDACTED] New York address, and reflecting that he was naturalized as a U.S. citizen in New York on January 29, 1980.

[REDACTED]'s Form N-400, Application to File Petition for Naturalization, filed in December 1978, containing his home addresses in New York between March 1973 and December 1978.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

The AAO finds, upon review of the totality of evidence, that the applicant has established by a preponderance of the evidence, that her father was physically present in the U.S. for ten years between 1973 and 1983, all of which occurred after [REDACTED] turned fourteen, and all of which occurred prior to the applicant's birth on February 9, 1986. The applicant has therefore satisfied the requirements for transmission of citizenship under section 301(a)(7) of the former Act. The appeal will therefore be sustained and the N-600 application will be approved.

**ORDER:** The appeal is sustained and the application is approved.