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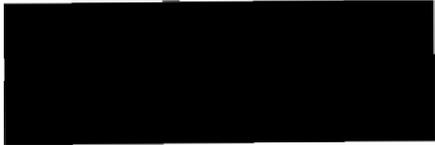
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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NOV 26 2008

FILE: [REDACTED] Office: NEW YORK, NY Date:

IN RE: Applicant: [REDACTED]

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:



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.


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on [REDACTED] in Ireland. The applicant's father, [REDACTED], was born on [REDACTED] in Ireland and became a U.S. citizen upon his naturalization on May 9, 1960. The applicant's parents were married on January 27, 1971 in Ireland. 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 father.

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to establish his father's required physical presence in the United States. The application was accordingly denied. On appeal, the applicant, through counsel, contends that he has established that his father had the required physical presence in the United States and is therefore entitled to a Certificate of Citizenship.

"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 (9th Cir. 2000) (citations omitted). The applicant in this case was born on February 2, 1976. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.¹

Section 301(a)(7) of the former Act states 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his father was physically present in the United States for at least 10 years prior to 1976, five of which after 1939 (when his father turned 14 years old).

The record in this case contains, in relevant part, the applicant's birth certificate, a statement from the applicant's uncle, a statement from the applicant's father's co-worker, the applicant's parents' marriage certificate, the applicant's father's naturalization certificate, the applicant's father's social security earnings statement indicating employment income for the years 1954 to 1962 (not including 1961), an affidavit executed by the applicant's father, a luggage tag dated in 1954, a copy of the applicant's father's passport,

¹ The AAO notes that Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

and copies of the applicant's grandfather's military records. On appeal, the applicant submitted eight additional affidavits executed by his father's friends, co-workers and neighbors.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The evidence submitted consistently indicates that the applicant's father resided in the United States from 1954 until 1961, and from 1962 to 1964. The affidavits are detailed and, to the extent possible, are corroborated by documentary evidence. The AAO finds that the affidavits and documentary evidence submitted sufficiently establish that the applicant's father was physically present in the United States for the ten-year period required by statute.

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). 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 the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.