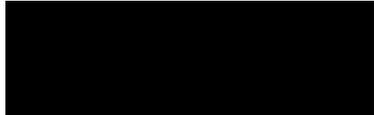


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 29 2003

FILE [Redacted] Office: PHILADELPHIA, PA

Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Derivative Citizenship under the Act of 1802, as supplemented by the Act of 1907.

ON BEHALF OF APPLICANT:
SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born on February 18, 1926, in Korce, Albania. The record indicates that the applicant's father, [REDACTED] was born in Albania on May 4, 1891, and that he became a naturalized United States (U.S.) citizen on January 26, 1928. The applicant's father died in Albania on October 13, 1972. The applicant's mother, [REDACTED] was born on May 2, 1904. She died in May 1989, and had no claim to U.S. citizenship. The applicant's parents married in 1917. The applicant claims that she is entitled to derivative U.S. citizenship through her naturalized U.S. citizen father.

The district director determined that the applicant had failed to resolve the name difference between her father's name as written on the submitted naturalization certificate [REDACTED] and his name as written on the submitted birth certificate [REDACTED]. The district director additionally found that the applicant had failed to establish that she had resided in the U.S. as a lawful permanent resident, as required by the Act. The application was denied accordingly.

On appeal, the applicant submitted several documents indicating that her paternal grandfather's name was [REDACTED] and that her father's full name was [REDACTED]. The appeal contains no information or evidence to establish that the applicant acquired lawful permanent residence or that she resided in the United States pursuant to a lawful permanent resident status.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. See *Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

The AAO has reviewed the Family Certificate submitted by the applicant, which states that her paternal grandfather's name was [REDACTED]. The AAO additionally reviewed the applicant's father's death and marriage certificates stating that his father's name was [REDACTED]. The AAO is satisfied that, with the submission of this evidence, the applicant has established that her father was known as both [REDACTED] and [REDACTED].

"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 was born in Albania in 1926, so the Act of 1802, as supplemented by the Act of 1907, controls her claim to derivative citizenship.

Under the Act of 1802, as supplemented by the Act of 1907, the applicant must have been under 21 on the date of her father's naturalization and at some point, she must have resided in the U.S. pursuant to a lawful permanent resident status.¹

Although the evidence establishes that the applicant meets the age requirements set forth in the Act of 1802, as supplemented by the Act of 1907, the evidence submitted fails to establish that the applicant resided in the United States pursuant to a lawful permanent resident status as required by the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. See also § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. Given the absence of evidence in the record to support the claim that the applicant resided in the U.S. pursuant to lawful permanent residence status, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ It is noted that the district director's decision erroneously assessed the applicant's claim pursuant to section 321 of the Immigration and Nationality Act, as amended before May 24, 1934. The error is found to be harmless, however, since both sections require that the applicant have lawful permanent residence in the United States.