

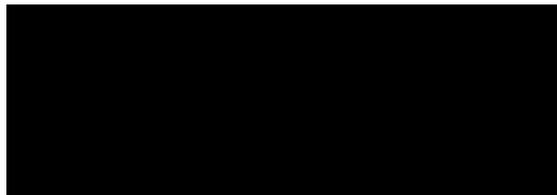
identify and prevent identity misappropriation  
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PUBLIC

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



EB

FILE:



Office: BALTIMORE, MARYLAND

Date:

03/22/06

IN RE:

Applicant



APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 Revised Statutes, as amended by the Act of May 24, 1934, Pub.L. 73-250, 48 Stat. 797

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Albania on March 29, 1936 of a naturalized U.S. citizen father and a non-U.S. citizen mother. The AAO notes that the district director erroneously adjudicated the instant application pursuant to § 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433. “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 1936; therefore, the applicable law in this case is Section 1993, Revised Statutes of 1878, as amended by the Act of May 24, 1934 (amended Section 1993).

The amended Section 1993 states that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

The record establishes that the applicant’s father was a U.S. citizen at the time of the applicant’s birth, and that the applicant’s father resided in the United States prior to the applicant’s birth. The evidence establishes that the applicant was a U.S. citizen at birth through his U.S. citizen father. The applicant has never lived in the United States; therefore, at issue are the retention requirements that the applicant failed to meet, causing his U.S. citizenship to cease.

In order to retain the U.S. citizenship the applicant derived through his father, the applicant would have had to enter the United States after his fourteenth but before his twenty third birthday and remain continuously physically present in the United States for at least five years. The applicant must have completed the five years of continuous physical presence prior to his twenty eighth birthday.

The AAO notes that § 324(d)(1) of the Immigration and Nationality Act (the Act), which was added by § 103 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, came into effect on March 1, 1995 and permits persons who had ceased to be U.S. citizens for failure to comply with former § 301(b) retention requirements to have their citizenship restored by taking an oath of allegiance to the United States. The oath may be taken abroad and restores the individual’s U.S. citizenship prospectively. There is no evidence that the applicant has taken the prescribed oath; hence, at the present time he is ineligible for a certificate of citizenship.

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. The applicant has not met that burden; therefore, the appeal will be dismissed. This dismissal is without prejudice to the applicant’s filing another application for a certificate of citizenship if and when evidence that he has taken the oath of allegiance becomes available.

**ORDER:** The appeal is dismissed.