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



U.S. Citizenship  
and Immigration  
Services

EG

[REDACTED]

FILE:

[REDACTED]

Office: SALT LAKE CITY, UT

Date: JUN 13 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 205 of the Nationality Act of 1940; 6 U.S.C. § 605.

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 Field Office Director, Salt Lake City, Utah. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Canada on April 13, 1946. The applicant was born out of wedlock to [REDACTED]. The applicant's mother was born in Canada on October 16, 1927. The applicant's maternal grandfather, [REDACTED], was a native-born U.S. citizen. The applicant presently seeks a certificate of citizenship pursuant to section 205 of the Nationality Act of 1940 (the Nationality Act), 6 U.S.C. § 605, claiming that she acquired U.S. citizenship at birth through her mother, who in turn acquired U.S. citizenship at birth through her father, the applicant's maternal grandfather.

The field office director determined that the applicant was not a U.S. citizen pursuant to section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), because she could not establish that her mother was a U.S. citizen or that she had the required physical presence in the United States. The application was denied accordingly. The director did not address the applicant's U.S. citizenship claim under section 205 of the Nationality Act.

On appeal the applicant asserts, through counsel, that her maternal grandfather was born in the United States and that U.S. citizenship was transmitted to her mother at birth. The applicant asserts that the evidence in the record establishes she meets the requirements for transmission of U.S. citizenship through her mother, pursuant to section 205 of the Nationality Act, the law in effect at the time of her birth.

"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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in April 1946. The Nationality Act of 1940 applies to her case. The applicant's mother was born in 1927. Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1933), is applicable in determining whether U.S. citizenship was transmitted at birth to the applicant's mother.

R.S. section 1993 provided that a child:

[B]orn 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.

Pursuant to the provisions of R.S. section 1993, the applicant must thus establish that her maternal grandfather resided in the United States prior to the applicant's mother's birth in 1927. In *Matter of V*, 6 I&N Dec. 1, 5 (A.G. 1954), the Attorney General found that a minor's brief residence within the United States satisfied the residence requirements of R.S. section 1933. See also, *State ex rel. Phelps v. Jackson*, 79 Vt. 504, 519 (1907). The present record reflects that the applicant's maternal grandfather was a U.S. citizen born in the State of Washington. The AAO finds that the applicant's maternal grandfather's birth in the United States establishes that he resided briefly

in the U.S. at some point prior to the applicant's birth. Accordingly, the AAO finds that the applicant has established that her mother acquired U.S. citizenship at birth.

As previously noted, "[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." *See Chau v. Immigration and Naturalization Service, supra*. The applicant was born on April 13, 1946. Because the applicant was born out of wedlock to a U.S. citizen mother, section 205 of the Nationality Act is applicable to her acquisition of citizenship claim.

Section 205 of the Nationality Act provided, in relevant part, that

[a] child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States . . . shall be held to have acquired at birth her nationality status.

There is evidence in the record, including the applicant's mother's high school records, to establish that she resided in the United States prior to the applicant's birth in 1946. As previously noted, the applicant's mother acquired U.S. citizenship at birth. Therefore, the applicant acquired U.S. citizenship at birth through her mother pursuant to section 205 of the Nationality Act.

The regulations provide at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has met her burden in the present matter. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.