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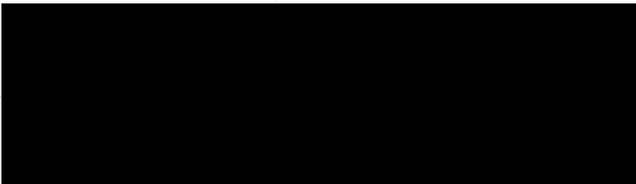
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

HL

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FILE:

Office: INDIANAPOLIS

Date: DEC 05 2006

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under sections 309 and 301 of the former Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The record reflects that the applicant was born in Yemen on March 22, 1974. The applicant's father, [REDACTED] was born in Yemen on June 25, 1939, and he became a naturalized U.S. citizen on June 18, 1968 prior to the applicant's birth. The applicant's mother, [REDACTED] was born on May 20, 1939, and the record does not indicate that she is a U.S. citizen. The record reflects that the applicant's parents were married on November 12, 1954. The applicant seeks a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded the applicant failed to establish that his father was physically present in the United States for a total of ten years prior to the applicant's birth, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant indicates that his father has been in the United States since February 13, 1963, and he has been a resident since June 18, 1968, thus he meets the residency requirement. *Statement from Applicant*, dated June 6, 2006.

"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 in the present matter was born in 1974. Section 301(a)(7) of the former Act therefore applies to the present case.

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.

At issue in the present proceeding is whether the applicant's father, "prior to the birth of [the applicant], 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." Section 301(a)(7) of the former Act.

As observed by the district director, the applicant's father submitted a statement to provide dates for his stays in the United States. Prior to the applicant's birth, the applicant's father indicated that he was present in the United States from March 13, 1962 to July 19, 1969, and from October 13, 1970 to May 19, 1973. These two periods total nine years, eleven months, and eleven days. No evidence in the record contradicts the applicant's father's statement, or otherwise suggests he was in the United States for a longer period prior to the applicant's birth.

On appeal, the applicant asserts that his father has been in the United States for at least ten years. Yet, based on the foregoing, the applicant has not established that his father was in the United States for ten years prior to the applicant's birth, such that he met the residency requirement found in section 301(a)(7) of the former Act. For this reason, the application may not be approved.

The regulation at 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 failed to meet his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.