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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: JAN 20 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act, 8 U.S.C. § 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.

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 November 13, 1990, in Santiago, Las Condes, Chile. The record indicates that the applicant's father was born in Seattle, Washington, on January 16, 1960, and that he is a United States citizen. The applicant's mother was born in Chile, and is not a U.S. citizen. The applicant's parents married on March 20, 1981, in Santiago, Las Condes, Chile. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director concluded the applicant had failed to establish that his father was physically present in the United States for at least 5 years prior to the applicant's birth, 2 years of which were after the applicant's father turned 14. The application was denied accordingly.

On appeal, the applicant asserts, through his father, that the district director failed to take the statement of his father's aunt, nto account when making his decision. The applicant additionally states that he will submit additional affidavits regarding his father's residence in the United States, within 30 days. The AAO notes that no additional information or affidavits were received. The AAO notes further that the record does not contain a statement or affidavit by

"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 in Chile in 1988. Thus, the version of section 301 of the Act that was in effect at that time (section 301(g)) controls his claim to derivative citizenship.

Section 301(g) of the Act, 8 U.S.C. § 1401, states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> (g) 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 five years, at least two of which were after attaining the age of fourteen years . . . .

In *Matter of V,* 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(g) of the Act, the applicant must establish that his father was physically present in the U.S. for five years between January 16, 1960, and November 13, 1990, and that two of those years were after January 16, 1974, when his father turned 14.

The evidence pertaining to the applicant's father's physical presence in the United States consists of the following documents:

A Washington State birth certificate indicating that the applicant's father was born in Seattle, **Washington**, on **January 16, 1960**;

A marriage certificate issued in Santiago, Chile, indicating that the applicant's father and mother married in **Chile** on **March 20, 1981;**

A Chilean birth certificate indicating that the applicant was born on **August 9, 1988** in Santiago, **Chile**;

A **U.S.** Social Security Statement indicating that the applicant's father earned $2803.00 during the year **1984** and $6,201.00 during the year **1985**.

A **Florida** driver's license issued to the applicant's father on July 23, **1985**.

A passport for the applicant's paternal grandfather indicating that was present in Seattle, Washington between 1960 and 1963, and indicating that the applicant's father traveled to Chile with on February 24, 1964. The passport additionally contains an undated U.S. immigration, I-94, Arrival-Departure Record indicating that the applicant's father lived in Seattle, Washington, when he traveled on passport. The record contains no explanation or corroborating evidence to establish when the applicant's father resided in Seattle, Washington, or that the applicant's father resided in the U.S. with during the years indicated in his passport.

Upon review of the record, the AAO finds that the evidence submitted by the applicant establishes only that his father was physically present in the United States at the time of his birth in January 1960, and that he was present for an undetermined period of time during the years 1984 and 1985 (after the applicant's father turned 14). Moreover, the AAO finds that this evidence fails to establish exactly when the applicant's father was present in the United States in 1984 and 1985, and that it fails to establish that the applicant's father was continuously present, as defined in *Matter of V, supra*. The evidence submitted therefore fails to establish that the applicant's father was physically present in the U.S. for a total of five years between January 16, 1960 and August 9, 1988, and the applicant has failed to establish that he is entitled to derivative U.S. citizenship pursuant to section 301(g) of 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 Act, 8 U.S.C. § 1452. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.