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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JUN 29 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:

[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, Director
Administrative Appeals Office

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

The applicant was born on March 25, 1955, in the Philippines. The record reflects that the applicant's father, Effendi Shuck, was born in the Philippines and is not a United States (U.S.) citizen. The applicant's mother, Lilian Shuck, was born in the Philippines on February 5, 1927. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), based on the claim that her mother is a derivative U.S. citizen, and that she derived U.S. citizenship at birth through her mother.

The interim district director (IDD) determined the applicant had failed to establish that her mother was a U.S. citizen at the time of her birth. The IDD concluded further that, even if the applicant had established her mother's U.S. citizenship at the time of her birth, the applicant had additionally failed to establish that her mother met physical presence requirements set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal counsel asserts that pursuant to Section 1993 of the Revised Statues of the United States of 1878 (section 1993 of the Revised Statutes), the applicant's mothe derived U.S. citizenship through her father - born in the Philippines on December 23, 1904). Counsel asserts th in turn, derived U.S. citizenship through his fathe born in the United States on November 20, 1889). Counsel additionally asserts tha the U.S. physical presence requirements for passing citizenship on to the applicant because her residence in the Philippines prior to its independence constituted residence in an outlying possession of the United States.

"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 on March 25, 1955. Section 301(a)(7) of the former Act would therefore be applicable to her derivative citizenship claim.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The AAO finds that birth certificate and Department of State evidence contained in the record establishes that nd his son were U.S. citizens. The evidence fails, however, to establish that the applicant's mother derived U.S. citizenship through her father.

Counsel asserts that ship manifest and affidavit evidence submitted on appeal establishes tha temporarily resided in the U.S. and that the applicant's mothe therefore derived U.S. citizenship through her father pursuant to section 1993 of the Revised Statutes.

Section 1993 of the Revised Statutes, which applies to children born abroad to U.S. citizens prior to May 24, 1934, states that:

> All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

The ship manifest evidence contained in the record indicates that in February 1920 worked on a ship that traveled to the United States. The AAO notes that the ship manifest evidence does not establish wheth arrived in the U.S., whether he got off the ship in the U.S., or that he was present in the U.S. for any period of time pursuant to the ship's voyage.

The record additionally contains affidavits from family members and an affidavit written by in 1987, indicating that traveled to the U.S. with his father at some point when he was young. The AAO notes that the affidavits from family members are based on hearsay statements made by rather than based on personal knowledge of the trip. Moreover, the AAO finds that affidavit is vague and lacks material details regarding the dates of his travel or the dates that he was in the United States, as well as regarding the places he stayed in the U.S. and the name of the ship he traveled on. The record contains no corroborative evidence of Furthermore, the AAO notes that the information contained in the affidavits appears to be contradicted by an August 27, 1952, affidavit signed by stating that he never visited the United States. Based on the above concerns, the AAO finds that the applicant failed to establish that her grandfathe resided in the U.S. for section 1933 purposes. The AAO finds further that the applicant therefore failed to establish that her mother derived U.S. citizenship at birth throug

The AAO notes the validity of the IDD's conclusion that, even if the applicant had established that her mother derived U.S. citizenship from Mr. Brown, the applicant nevertheless failed to establish that her mother met the physical presence requirements for passing derivative citizenship on to the applicant under section 301(a)(7) of the former Act.

In order to derive citizenship pursuant to section 301(a)(7) of the former Act, the applicant must establish that her mother was physically present in the U.S. for a period totaling ten years between February 5, 1927 and March 25, 1955, and that five of those years were after February 5, 1941, when her mother turned 14. Based on the evidence contained in the record resided in the Philippines for her entire life prior to the applicant's birth.

Counsel asserts that pursuant to section 301(a)(7) of the former Act, residence in an outlying possession of the United States qualifies as residence for derivative citizenship purposes. Counsel asserts further that, residence in the Philippines prior to their independence from the United States constituted residence in an outlying possession under section 301(a)(7) of the former Act. The AAO notes, however, that the Ninth Circuit Court of Appeals decision, *Friend v. Reno,* 172 F.3d 638, 648 (9th Cir. 1999), held that residence in the Philippines during its territorial period did not qualify as residence in the United States. Moreover, the Board of Immigration Appeals decision, *Matter of Hermosa,* 14 I&N Dec. 447 (BIA 1973) held that the Philippine Islands are not deemed to be part of the United States for purposes of the citizenship clause of the Fourteenth Amendment. Accordingly, residence in the Philippines does not qualify as residence in the United States for section 301(a)(7) derivative citizenship purposes.

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 in this case has not met her burden. The appeal will be dismissed accordingly.

**ORDER:** The appeal is dismissed.