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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: MAR 01 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

ON BEHALF OF APPLICANT:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

PUBLIC COPY

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

The applicant was born on August 23, 1952, in Suche Nowy Sacz, Poland. The record indicates that the applicant's father was born in Windber, Pennsylvania, on June 26, 1919, and that he was a U.S. citizen. The record reflects that the applicant's father, died on March 9, 1981, in Chicago, Illinois. The applicant's mother was born in Poland on August 12, 1926. She is not a U.S. citizen. The applicant's parents married on January 24, 1945, in Zubsuche, Poland. They divorced in Poland on October 22, 1973, when the applicant was 21 years old. The record indicates that the applicant entered the United States without inspection on September 23, 1991, at the age of 39. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the NA); 8 U.S.C. § 601(g), based on the claim that he acquired U.S. citizenship at birth through his father.[1]

The district director determined that based on the record the applicant had failed to establish that his United States citizen father (Mr. resided in the United States or its outlying possessions for a period of 10 years prior to his birth, at least 5 of which were after M ached the age of 16. The application was denied accordingly.

On appeal counsel asserts that the district director misinterpreted the residency requirements in the applicant's case. Counsel asserts that in spite of Mr. absence from the United States between 1931 and 1975, the applicant has established that his father's general abode or primary dwelling place during that period of time was in the United States, and that M therefore met the residency requirements set forth in section 201(g) of the NA.

"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).

In order for a child born outside of the United States to derive citizenship from one U.S. citizen parent pursuant to section 201(g) of the NA, it must be established that, when the child was born, the U.S. citizen parent resided in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 16. *See § 201(g) of the NA.* In addition, the child must establish that she or he had continuous physical presence in the United States or its outlying possessions for 5 years between the ages of 14 and 28, if begun before October 27, 1972, or had 2 years continuous presence in the United States between the ages of 14 and 28. *Id.*

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted).

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[1] The AAO notes that the district director's decision referred to section 301(g) of the Immigration and Nationality Act of 1952; 8 U.S.C. § 1401(g) derivative citizenship requirements. The applicant was born prior to December 24, 1952 (the effective date of the Immigration and Nationality Act of 1952). He must therefore meet the derivative citizenship requirements for persons born abroad, as set forth in section 201(g) of the Nationality Act of 1940. The district director's decision correctly analyzes the section 201(g) requirements in its decision. Therefore, the error is harmless and the decision remains legally correct.

On appeal, counsel does not dispute the fact that in 1931, at the age of 12, the applicant's father left the United States for Poland with his family, and that Mr. remained in Poland until 1975. Counsel asserts, however, that Mr. and his family departed the United States in 1931 solely to visit relatives. Counsel asserts further that Mr. subsequent stay in Poland was involuntary due to the World War II invasion of Poland during those years, and the institution of communist power which made travel to western countries impossible. Counsel additionally asserts that the applicant's father renewed his U.S. passport regularly so that he could travel to the U.S. once it became possible, and that as a result, Mr. primary dwelling place or general abode was in the United States during his 44 year absence from this country.

In support of his assertions, counsel refers to a 1950, Ninth Circuit Court of Appeals case (*Acheson v. Yee King Gee,* 184 F. 2d 382 (9th Cir. 1950) and two 1951, California District Court cases (*Toy Teung Kwong V. Acheson,* 97 F. Supp. 745 (N.D. Cal. 1951) and *Wong Gan Chee v. Acheson,* 95 F. Supp. 816 (N.D. Cal. 1951)), as well as a 1951, Board of Immigration Appeals (Board) case (*Matter of B,* 4 I&N Dec. 424), interpreting the term "residence" under the Nationality Act of 1940. Counsel asserts that the term "residence" should be interpreted liberally in the applicant's case, that the term is not synonymous with physical presence, and that the term does not require a showing of actual residence on the applicant's father's part

In *Savorgnan v. United States,* 338 U.S. 491, 505, the U.S. Supreme Court defined the term "residence" as the principal dwelling place of a person, or their actual place of general abode, without regard to intent. "The inquiry is one of objective fact, and one's intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material." *Alcarez-Garcia v. Ashcroft,* 293 F. 3d 1155, 1157 (9th Cir. 2002) (citations and quotations omitted).

The AAO finds that in the present case, the applicant has failed to establish that Mr principal dwelling place was in the United States between 1931 and 1975. Unlike the facts found in the *Yee King Gee, Toy Teung Kwong* or *Wong Gan Chee, supra,* cases referred to by counsel, the applicant has failed to provide persuasive evidence to establish that Mr 1931, departure from the United States was temporary in nature. The record fails to establish that Mr. parents held lawful permanent resident or citizenship status in the United States or that at any point, he or his parents maintained a home address, business, employment, or open bank account anywhere in the United States. The applicant also failed to establish that he or his family maintained any personal possessions or other ties in the U.S., or that they obtained returning citizen forms from the Immigration and Naturalization Service prior to departing the country in 1931.

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. Given the lack of evidence to indicate that Mr. principal dwelling place or general abode was in the United States during the requisite time period, the applicant has not met the burden of establishing that his father resided in the United States a total of 10 years, prior to the applicant's birth, 5 of which were after the age of 16. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.