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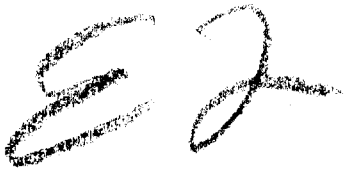

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: FEB 8 2006

IN RE: Applicant [redacted]

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

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.

Ellen L. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born in the Philippines on September 10, 1949. The applicant's father was born in the Philippines on March 16, 1916, and the applicant claims that his father derived U.S. citizenship from the applicant's grandfather. The applicant's mother was not a U.S. citizen, although she later became a lawful permanent resident (LPR). The applicant claims that his paternal grandfather was born in the United States in 1867 and was a U.S. citizen. The applicant's parents married on May 2, 1935 in the Philippines. It is not know whether the applicant's grandfather was married.

On October 14, 1980, the applicant applied to register his U.S. citizenship at the U.S. consulate in Manila. In a letter dated May 18, 1982, a consular official informed the applicant that he had acquired U.S. citizenship at birth pursuant to § 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g), but that he had lost his citizenship for failure to comply with citizenship retention requirements, as set forth in § 301(b) of the Immigration and Nationality Act of 1952 (1952 Act). On appeal, counsel points out that § 324(d)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1435(d)(1) remedied the applicant's citizenship retention problem by allowing the applicant to regain his U.S. citizenship by taking the oath of allegiance. Amendments made to the Act in 1978 and Title I of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA) allow, with limited exceptions, for oath of allegiance restoration of U.S. citizenship to former citizens who lost their nationality by failing to comply with retention requirements set forth in the 1952 Act and the Nationality Act. The AAO finds, nevertheless, that the applicant's claim to citizenship fails for other reasons discussed in the district director's decision.

The district director determined that the documentation on the record contained unexplained inconsistencies and lacked sufficient evidence to establish the applicant's eligibility for a certificate of citizenship. The district director noted that the record contained different versions of an extract of a birth record for the applicant, one of which listed his father as Filipino, and the other showing that his father was American. The district director therefore denied the application. The AAO notes that, although the district director mentioned the applicant's failure to reveal that he was married and had four children when he was admitted to the United States in 1986 as the unmarried son of an LPR, the denial of the certificate of citizenship was not based on this fact.

On appeal, counsel asserts that only such documents as the applicant chooses to proffer for the purposes of his N-600 application should be considered, and that any documents on the record the applicant chooses to disregard should be ignored. Counsel points out that there is no "good moral character" element in the application for a certificate of citizenship, referring to counsel's allegation that Citizenship and Immigration Services (CIS) denied this application based on a finding that he had procured a benefit through misrepresentation. As noted, however, the denial was not premised on the applicant's procurement of an immigrant visa through misrepresentation. Counsel also contends that the U.S. government previously determined that the applicant was a U.S. citizen who lost his citizenship, referring to the consular official's letter of 1982. It is not clear what evidence the State Department considered in making that determination, however, and, given the evidence currently on the record, CIS cannot conclude that the applicant has established eligibility for a certificate of citizenship.

"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 September 10, 1949; therefore, § 201(g) of the Nationality Act applies to his derivative citizenship claim. Section 201(g) of the Nationality Act states in pertinent part that:

> A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In the present matter, the applicant must establish that his father was a U.S. citizen who resided in the United States or one of its outlying possession for ten years between March 16, 1916 and September 10, 1949, and that five of those years occurred after March 16, 1932, when his father turned sixteen. It is also noted that the Philippines was considered an outlying possession only until it gained independence on July 4, 1946; therefore, any residence in the Philippines from July 4, 1946 to September 10, 1949 would not count toward fulfilling this requirement.

When the applicant's father was born in 1916, the applicable nationality law was § 1 Act of February 10, 1855 (Act of 1855), which states in pertinent part that:

> [P]ersons heretofore born, or hereafter to be born, out of the limits and jusrisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however*, that the rights of citizenship shall not descend to persons whose fathers never resided in the United states.

Therefore, in order to show that the applicant's father was a U.S. citizen, the applicant must establish that his grandfather was a citizen of the United States at the time of his father's birth, and that his grandfather resided in the United States prior to his father's birth.

The relevant documents contained in the record are as follows:

- A copy of a U.S. Army Form for the Physical Examination of a Recruit, signed by [redacted] whom the applicant claims as his grandfather. [redacted] indicated that he was a U.S. citizen, born in 1867 in Springfield, Illinois. The form was signed on August 28, 1898 at Long Island. This document is accompanied by a copy of another apparent military document which is illegible.

- A copy of a letter from the Veterans Administration (VA) dated April 16, 1973 reflecting that [redacted] was born in Springfield, Illinois and served in the U.S. armed forces from 1895 to 1905. The letter also states that the VA file does not contain copy of [redacted] birth certificate.

- Two different copies of information extracted from the Marriage Register of Angeles City (the Philippines) reflecting the May 2, 1935 marriage between [redacted] whom the applicant claims as his father, and [redacted] The copy issued on June 18, 1978 lists [redacted] nationality as Filipino, and his father's (the applicant's grandfather's) nationality as American. The copy issued on March 2, 1979 shows the applicant's father's nationality as Filipino, and his grandfather's nationality as Filipino, as well.

- Two different copies of information extracted from the Record of Births of the municipality of Mabalacat, province of Pampanga, regarding the applicant's birth record. The copy issued on August 11, 1980 shows the applicant's father's name as [redacted] his nationality as Filipino, and his

place of birth as Mabalacat, Pampanga. The copy issued on March 22, 1985 lists the applicant's father's name as his nationality as American, and his place of birth as Fort Stotsenberg. It is noted that these two documents also contain differing places of birth for the applicant's mother.

- A more recent copy of the applicant's birth information extracted from the Record of Births of Mabalacat, issued on December 29, 2003 in response to the applicant's request for clarification regarding the discrepancies between the two previously issued birth documents. This copy lists the applicant's father's name as and his nationality as Filipino. It contains no information regarding the applicant's father's birthplace. This document is accompanied by a letter from Victor the Municipal Civil Registrar, attesting to its accuracy and explaining that the registry book does not list data regarding the birthplace of the child's parents. stated that he could not explain the discrepancies found between the birth documents issued in 2003 and 1985.

- A marriage contract showing that the the applicant married in Mabalacat on June 10, 1970. This document lists the applicant's father's name as Alberto Flake and his father's nationality as Filipino.

- Copies of birth certificates of the applicant's brother and sister, both of which list their father's nationality as Filipino. The brother's certificate shows their father's name as while his sister's certificate lists their father's name as

In order for the applicant's claim to U.S. citizenship to succeed, he must first establish that his grandfather was a U.S. citizen who resided in the United States prior to his father's birth, and that his father was a legitimate child or was legitimated under the laws of the applicant's grandfather's domicile. The record contains no birth certificates for the applicant's father or grandfather. No birth record was located for his father, even though such records were kept in his birthplace in 1916. No records were kept at the time of his grandfather's birth in Illinois in 1867. The record does not contain a marriage certificate for the applicant's grandfather.

The evidence establishes that a U.S. citizen named rved in the U.S. army between 1895 and 1905. The evidence does not indicate, however, whether that was ever in the Philippines or ever married a Filipina citizen. There is no information about omicile. The applicant has failed to provide any secondary evidence such as church records, employment records, property records, or even affidavits or accounts regarding the applicant's grandfather's or father's background. As noted above, the only documents showing the applicant's father's father to be someone named are the applicant's father's two marriage records, one of which lists as Filipino. In sum, the record fails to demonstrate that the applicant's father was the legitimate or legitimated son of a U.S. citizen who had resided in the United States.

Regarding the documentation of the applicant's father's citizenship, as illustrated above, the record contains numerous discrepancies among the family's various civil records. Some documents list the applicant's father as Filipino, while others state that he was American. Some documents show his name to be whereas others show his name was Counsel maintains that the applicant's 2003 birth record extract showing his father's name as and nationality as Filipino should be disregarded, based on counsel's claim that this document contains "clerical errors." Counsel contends, for example, that Filipino birth records are required to contain the father's birthplace, yet the municipal civil registrar of Mabalacat unequivocably stated on December 23, 2003 that the birth registry book contains no information regarding the birthplace of the father or mother; it merely notes their nationality. Counsel also maintains that it was an error to write the applicant's father's name as in the 2003 extract, since his name was Several other documents on the record, however, also show the applicant's father's name was Moreover, there is no evidence on the record regarding the applicant's father's place of residence, precluding the AAO from drawing any conclusions about whether he met the residency requirements provided for in § 201(g) of the Nationality 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. In *Matter of E-M-,* 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that in order to satisfy the preponderance of evidence standard, it is generally sufficient that the evidence establish that something is probably true. However, it must also be kept in mind that the Board of Immigration Appeals held in *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 331 (BIA 1969), that:

> [W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant." (Citations omitted.)

The AAO finds that the important discrepancies discussed above cast doubt onto the applicant's assertions regarding his father's and grandfather's identity and citizenship. The lack of secondary evidence further obscures the applicant's bases for claiming U.S. citizenship. The record lacks documentation and contains unreconciled material inconsistencies relating to his grandfather's and father's biographical data, such that it is not possible to ascertain whether the requirements of § 1 of the Act of 1855 or § 201(g) of the Nationality Act have been met.

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 establish by a preponderance of the evidence that he derived U.S. citizenship from his father, or that applicant's father derived U.S. citizenship from the applicant's grandfather. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.