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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 10 2005

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 matter will be remanded for further action consistent with this decision.

The record reflects that the applicant was born on January 5, 1967, in the Philippines. The applicant's father, as born in the Philippines on August 21, 1927. The applicant claims that his paternal grandfather was a U.S. citizen born in New York in 1900, and that the applicant's father was therefore a U.S. citizen at birth. The applicant's mother was born in the Philippines and is not a U.S. citizen. The applicant's parents married on March 10, 1961, in the Philippines. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The interim district director determined that the evidence in the record contained material discrepancies, and that the applicant had failed to establish who his paternal grandfather was or that his father had derived U.S. citizenship. The interim district director concluded that the applicant had failed to overcome the discrepancies relating to his father's citizenship and that he had thus failed to establish, by a preponderance of the evidence, that he was a citizen pursuant to section 301(a)(7) of the Act. The application was denied accordingly. [1]

Counsel asserts on appeal, that the evidence contained in the record overcomes any discrepancies relating to the applicant's paternal grandfather's name, and that the discrepancies were deemed inconsequential by the District Office and the AAO, in Certificate of Citizenship applications filed by two of the applicant's siblings Counsel concludes that the applicant has therefore established by a preponderance of the evidence that he is a citizen under section 301(a)(7) of the former Act.

"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 in the Philippines in 1967. The version of section 301 of the Act that was in effect at that time (section 301(a)(7), now known as section 301(g) of the Immigration and Nationality Act, as amended) therefore controls his claim to derivative citizenship.

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 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

[1] The AAO notes that the Acting District Director found in a March 3, 2003 letter requesting more evidence, that the applicant's father used the names "Carlos Agrusa" and "Charles Emilio Agrusa, Jr.", and that both names belonged to one and the same person.

of the United States by such citizen parent may be included in computing the physical presence requirement of this paragraph.

In the present case, the applicant must establish that his father (Mr was a U.S. citizen, and that he was physically present in the U.S. for ten years between August 21, 1927 and January 5, 1967, at least five years of which occurred after August 21, 1941, when his father turned fourteen.

The record contains the following evidence pertaining to Mr. U.S. citizenship and physical presence in the United States:

A February 22, 1996 letter from the U.S. Department of State stating that the applicant's father, Mr was issued a U.S. passport on February 4, 1982, at the U.S. Embassy in Manila, Philippines, and that he registered as a U.S. citizen on December 10, 1979, at the U.S. Embassy in Manila, Philippines.

Mr. U.S. passport, issued on February 4, 1982, at the U.S. Embassy in Manila, Philippines, in the name of born in the Philippines on August 21, 1927.

Mr. passport application, dated February 4, 1982, stating that his father was was born a U.S. citizen in 1900 in New York, New York, and that his mother was born in the Philippines in 1902. The application reflects that Mr. resided in Manila, Philippines.

Mr. Application for Registration as a U.S. citizen, dated October 4, 1978, stating that his father, was born a U.S. citizen in New York, New York on March 30, 1900, and that his mother, Isabel Aldeguer, was born in the Philippines in 1903. The application reflects that Mr resided in Manila, Philippines.

Mr. Filipino Certificate of Birth reflecting that he was born, on August 21, 1927. The birth certificate reflects that Mr father was age twenty-seven, born an American citizen in New York City, and that his mother was age twenty-five, born in the Philippines.

Mr. marriage certificate reflecting that he marri in the Philippines on March 10, 1961, and listing his father a Filipino, and his mother as

A marriage certificate reflecting that age twenty-five, married age twenty-three on July 12, 1925. The marriage certificate lists father as and his mother as The marriage certificate additionally states that as born an American citizen in New York City, New York, and that he resides in California.

An application for a U.S. Social Security Number, dated November 27, 1936, reflecting that was born on March 22, 1900, in New York, New York, to and that he resided in San Francisco, California.

A Certification of Military Service reflecting that th served in the U.S. Army from June 24, 1919 to June 7, 1928, and from December 16, 1941 to March 12, 1943.

A California Certificate of Death, stating that Charles R. Agrusa, was born in New York, New York in March 1900, died on May 22, 1951. The death certificate lists mother as from Italy, and his father as, unknown rom Italy. wife is listed as

A New York Birth Certificate stating that was born on March 30, 1900 in New York, to age twenty-seven, of Italy, and age twenty-one of Italy.

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 under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true

The AAO finds that the evidence contained in the record establishes that it is probably true that and born in New York, New York in 1900 to f Italy, are one and the same person, and that the person is the applicant's U.S. citizen paternal grandfather. The AAO finds further that it is probably true that the applicant's father acquired U.S. citizenship at birth through his father (Mr pursuant to the Act of February 10, 1885, 10 Stat. 604 which states that a child born abroad to a U.S. citizen father is a U.S. citizen, provided the father resided in the U.S. at one point in his life.

Nevertheless, the AAO notes that neither the interim district director's decision nor the applicant's appeal address the applicant's father's physical presence requirements under section 301(a)(7) of the former Act. Moreover, the present record contains no evidence relating to Mr physical presence in the United States or its outlying possessions. The AAO therefore finds it necessary to remand the present matter for consideration of evidence relating to Mr. physical presence in the U.S. or its outlying possessions.

The application is therefore remanded to the interim district director for reconsideration of the issues stated above and entry of a new decision which, if adverse to the applicant, will be certified to the AAO for review, accompanied by a properly prepared record of proceedings.

ORDER: The matter is remanded to the interim district director for further action consistent with this decision.