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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: MAR 23 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. (1940 Ed.) § 601(g).

ON BEHALF OF PETITIONER:

[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 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 November 15, 1948, in Sikory Bartyczki, Poland. The information contained in the record indicates that the applicant's mother, was born on October 1, 1914, in Philadelphia, Pennsylvania. The applicant's father was born in Poland on May 4, 1907. He is not a U.S. citizen. The applicant's parents married on June 11, 1946, in Sikory Bartyczki, Poland. The record indicates that the applicant was admitted into the United States as a visitor on December 5, 1996, at the age of 48. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the NA); 8 U.S.C. (1940 Ed.) § 601(g), based on the claim that he acquired U.S. citizenship at birth through his mother.[1]

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

On appeal counsel asserts that Ms. lived in the United States between 1914 and 1923, and again between 1930 and 1936, and that she therefore meets the residency requirements set forth in section 201(g) of the Act. Counsel submits no evidence to support his assertions, but asserts that a U.S. passport and affidavit evidence will be submitted within 60 days. The AAO notes that more than 60 days have passed and that it has received no additional evidence.

"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.*

The applicant submitted the following documents regarding his mother's residence in the United States:

> A birth certificate stating that was born in Philadelphia, Pennsylvania on September 30, 1914;
>
> A baptismal certificate stating that was baptized in Philadelphia, Pennsylvania on October 18, 1914.

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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. The error is therefore harmless and the decision remains legally correct.

The AAO notes that although the applicant's mother's full name is reflected as or on her baptismal certificate as well as on her marriage certificate and on the applicant's birth certificate, the first name contained in the birth certificate submitted to establish the applicant's mother's U.S. citizenship is The AAO notes further that the date of birth contained in the birth certificate submitted for the applicant's mother is September 30, 1914 rather than October 1, 1914. The AAO finds that the discrepancies in name and date of birth are significant, and that, on its own, the birth certificate is therefore not probative of the U.S. citizenship of the applicant's mother.

The AAO finds further that, even if the applicant had established his mother's U.S. citizenship, the record in the present case contains no evidence to establish that Ms esided in the United States at any time after October 1914.

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 the burden of establishing that his mother is a U.S. citizen or that she resided in the United States a total of 10 years, prior to his birth, 5 of which were after the age of 16. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.