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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

Date: JAN 3 0 2012 Office: SAN FRANCISCO, CA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7) (1967)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in [redacted] Germany on [redacted] The applicant's parents were married at the time of his birth. The applicant's grandfather became a U.S. citizen in [redacted]. The applicant's mother was not a U.S. citizen.[1] The applicant's father was admitted to the United States as a lawful permanent resident on [redacted]. The applicant claims that his father acquired U.S. citizenship at birth through the applicant's grandfather.

The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1967).

The field office director determined that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that his father had acquired U.S. citizenship or that his father met the physical presence requirements under former section 301(a)(7) of the Act. *See Decision of the Field Office Director*, dated August 18, 2011. The application was denied accordingly. On appeal, the applicant contends that he has established that he acquired U.S. citizenship at birth. *See Brief*, dated October 6, 2011.

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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1967. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.[2]

Former section 301(a)(7) of the Act stated 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Accordingly, the applicant must establish that his father is a U.S. citizen who was physically present in the United States for a period or periods of at least ten years, at least five of which were after [redacted] the date on which the applicant's father turned [redacted] of age, and before the applicant's birth on [redacted]. The applicant contends that his father, [redacted]

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[1] The applicant's mother passed away on October 1, 2010.

[2] Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

acquired U.S. citizenship through the applicant's grandfather and resided in the United States from [redacted]. *See Form N-600, Application for Certificate of Citizenship.*

Because the applicant's father was born to one U.S. citizen and one alien parent, section 201(g) of the 1940 Act provides the applicable law under which the applicant contends his father acquired U.S. citizenship. This section stated that the following shall be nationals and citizens of the United States at birth:

> 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: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.
>
> The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of . . . a bona fide American . . . commercial . . . organization, having its principal office or place of business in the United States . . . .

Under section 201 of the 1940 Act, "the place of general abode shall be deemed the place of residence." Section 104 of the 1940 Act. Further, "the place of general abode" means an individual's "principal dwelling place," without regard to intent. *Matter of B-*, 4 I&N Dec. 424, 432 (Central Office 1951).

The applicant must therefore establish that his grandfather resided in the United States for ten years before his father's birth on [redacted] and that at least five of these years were after his grandfather's sixteenth birthday on [redacted] Additionally, the applicant must show that his father resided in the United States or its outlying possessions for a period or periods totaling five years between the ages of 13 and 21, or establish that the retention requirements do not apply to his father.

The record does not indicate that the applicant's grandfather was employed by the U.S. government or a commercial organization whose principal office was in the United States. The applicant is therefore unable to establish that the retention requirements do not apply to his father.

In support of the applicant's contention that he acquired U.S. citizenship at birth, the applicant presented a German Birth Certificate indicating that he was born to [redacted] Germany. The applicant presented a German Birth Certificate indicating that [redacted] (the applicant's father) was born to [redacted] Germany. The applicant also presented the

following relevant evidence: a Social Security Card for [redacted]; an Extract of Registrant Classification Record from the Selective Service System for [redacted], indicating that the applicant's father underwent a physical examination on [redacted] and was classified as 5-A on [redacted]; a List or Manifest of Alien Passengers for the United States indicating that [redacted] (the applicant's grandfather) entered the United States on [redacted] a Marriage Certificate indicating that [redacted] in Detroit Michigan; a U.S. Census population schedule indicating that [redacted] resided in Detroit Michigan on [redacted] a copy of a U.S. passport issued to [redacted] prior to February 9, 1932;[3] a List or Manifest of Alien Passengers for the United States indicating that [redacted], accompanied by [redacted] (the applicant's uncle), entered the United States on [redacted] a Second Chief Engineer License issued to [redacted] which expired on January 18, 1936; a Stationary Engineers License issued to [redacted] which expired on May 5, 1936; a Michigan Driver's License for [redacted] which was issued on [redacted] and expired on [redacted]; a Social Security Card Application for [redacted], dated [redacted] and a passport application for [redacted] indicating that, on [redacted] the applicant's grandfather applied for a U.S. passport based on naturalization in the United States on [redacted].[4]

Additional documentation in the record such as school records, recognition certificates, family photographs and other family travel documents do not pertain to the applicant and his claim of U.S. citizenship. The documentation in the record establishes that the applicant's uncle, [redacted] returned to the United States on [redacted] and continued to the reside in the United States thereafter; however, such documentation does not establish that any of the applicant's other family members, including the applicant's father, accompanied the applicant's uncle to the United States.

The record also contains an affidavit from the applicant's mother, dated April 2006, in which she states that she was formerly married to [redacted] and that, to the best of her knowledge, [redacted] was physically present in the United States from 1945 until 1967. She also states that she first met [redacted] Germany. The applicant's mother's statement lacks probative detail and indicates that she does not have first-hand knowledge of the applicant's father's presence in the United States prior to 1965 when she met him in Germany. Her statement is also inconsistent with the applicant's father's statement on his 1963 immigrant visa application that he had never entered the United States prior to 1963.

The applicant presented a Pan American World Airways Inc. Manifest claiming that it reflects that the applicant's father entered the United States on [redacted]. The manifest reflects that a "[redacted] flew from Paris, France to New York on [redacted] The manifest does not

[3] The applicant did not include the page of the passport indicating the date on which the passport was issued; however, the photographic identity page of the passport contains an immigration stamp dated February 9, 1932.

[4] The passport application clearly reflects the age and place of birth that correspond to the applicant's grandfather and that a U.S. passport was issued on [redacted]. The passport application also reflects that the applicant's grandfather claimed to have resided in the United States from 1926 until 1937 in Detroit Michigan, except for a period from December 1931 until February 1932 when he resided in Germany. The passport application reflects that the applicant's grandfather intended to return to Germany on March 10, 1937.

provide any other specifics to identify that the "[redacted] listed is the applicant's father. None of the other passenger names listed on the manifest correspond to the applicant's father's known family members. Moreover, the applicant's father would have only been ten years old at the time his father would have reentered the United States alone. Finally, the applicant's father, in his immigrant visa application, indicated that, prior to the date of that application, September 19, 1963, he had never traveled to or resided in the United States. The applicant's father's immigration record confirms that he first entered the United States on [redacted].

Here, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for the required period of time prior the applicant's birth in [redacted]. While the record establishes that the applicant's father acquired U.S. citizenship at birth through the applicant's grandfather, the evidence reflects that the applicant's father failed to meet retention requirements for U.S. citizenship and lost his U.S. citizenship at the age of sixteen.[5] Additionally, even if the applicant's father had retained his U.S. citizenship, the record is insufficient to show that the applicant's father was physically present in the United States for a period of at least ten years, at least five of which were after [redacted] the date on which the applicant's father turned 14 years of age, and before the applicant's birth on [redacted]. Although the applicant's mother testified that the applicant's father was present in the United States from 1945 until 1967, her affidavit lacks detail, she lacks first-hand knowledge of the applicant's father's exact whereabouts and activities prior to 1965 and her testimony is inconsistent with the applicant's father's immigrant visa application stating that he had not entered the United States prior to 1963. The relevant evidence fails to establish the applicant's father's physical presence in the United States for the periods required for both (1) the applicant's father's retention of U.S. citizenship; and (2) the applicant's acquisition of U.S. citizenship at birth. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

While the applicant contends that the U.S. Department of State officially recognized his U.S. citizenship, the applicant fails to provide any evidence to support this contention. The only evidence that the applicant provides is a copy of a receipt for a passport application reflecting that he applied for a U.S. passport in the Canary Islands on [redacted] The record does not reflect that the U.S. Department of State has ever issued a U.S. passport to the applicant.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his father retained his U.S. citizenship or that his father resided in the United States for the requisite period for the applicant to have acquired citizenship at birth. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[5] Sec. 201(g), Nationality Act of 1940; *Matter of V-V-*, 7 I&N Dec. 122.