



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: NOV 29 2006

IN RE:

Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 Canada on May 26, 1943. The applicant's father, [REDACTED], was born on in Canada on December 4, 1903, and he was a U.S. citizen.¹ The applicant's mother, [REDACTED] was born in Canada on July 10, 1902, and the applicant does not claim that she was a U.S. citizen.

The applicant filed a Form N-600, Application for Certificate of Citizenship (N-600 application) on June 7, 2005. The application was denied by the director, California Service Center, on July 10, 2006, based on the applicant's failure to establish that her father resided in the United States for five years prior to the applicant's birth, as required by section 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g).²

On appeal, the applicant provides a letter from her older sister that discusses her father's family history and his location during different parts of his life. *Letter from [REDACTED]* dated July 20, 2006. The applicant states that her father has spent more of his life in the United States than in Canada. *Statement from Applicant on Form I-290B*, received August 2, 2006.

The record contains statements from the applicant on Form I-290B and in support of the initial Form N-600 application; a statement from the applicant's sister; a letter confirming the baptism of the applicant's father in Canada; a copy of the applicant's mother's passport; a copy of the applicant's grandfather's birth certificate; copies of social security reports for the applicant and her father; a copy of the applicant's father's death certificate, and; a copy of the applicant's birth certificate. The entire record was considered in rendering this decision.

"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 May 26, 1943. Section 201(g) of the Nationality Act is therefore applicable to her 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

¹ It is noted that the applicant's paternal grandfather was born in Rhode Island on October 20, 1873, thus he was a U.S. citizen. As the applicant's father was born in Canada on December 4, 1903, the Act of 1855 governed whether he acquired U.S. citizenship at birth. The Act of 1855 provided that a child born abroad to a U.S. citizen father was a U.S. citizen by operation of law if the father had resided in the United States at one point in his life. Thus, as the applicant's paternal grandfather was born in the United States, the record sufficiently suggests that he resided here (at least for a short period of time.) Accordingly, the applicant has established by a preponderance that her grandfather conferred U.S. citizenship to her father.

² While the director indicated that the applicant failed to establish that her father resided in the United States for five years prior to her birth, it is noted that section 201(g) of the Nationality Act requires the applicant to show that her father was present in the United States for 10 years prior to the applicant's birth, five of which were after his 16th birthday.

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 her father resided in the United States for ten years between December 4, 1903 and May 26, 1943, and that five of those years occurred after December 4, 1929, when the applicant's father turned sixteen.

Upon review, the applicant has failed to show her father's presence in the United States for 10 years prior to May 26, 1943. The letter from the applicant's sister provides a general description of the location of the applicant's father prior to the applicant's birth. Yet, the letter reflects that the applicant's sister was born in Canada, after the applicant's father had allegedly moved out of the United States. The applicant's sister states that the applicant's father did not return to the United States until after the applicant was born. Thus, the applicant's sister has no direct knowledge of her father's presence in the United States prior to the applicant's birth. The applicant's sister provides that she "took care of both of [her and the applicant's] parents" and that she has "all of [her] family's records" *Letter from [REDACTED]* Thus, she implies that records exist to support her statements regarding the applicant's father's residence in the United States prior to May 26, 1943. However, the applicant has not provided any such records. Nor has the applicant established or asserted that such records are unobtainable.

It is noted that the record of the applicant's father's baptism reflects that it was conducted in Canada, which does not support that he resided in the United States. The applicant provided a social security report for her father, yet it does not reflect that her father earned income in the United States prior to her birth. The fact that the applicant was born in Canada suggests that her father was residing in Canada at the time, which is congruent with her sister's statements. The death certificate for the applicant's father reflects that he died in the United States, yet this occurred after the applicant's birth. None of these documents support that the applicant's father met the residency requirement of section 201(g) of the Nationality Act.

Based on the foregoing, the applicant has not submitted sufficient evidence to show that her father was in the United States for 10 years prior to her birth, as required by section 201(g) of the Nationality Act. For this reason, the application may not be approved.³

The regulation at 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 AAO finds that the applicant has failed to establish by a preponderance of the evidence that her father resided in the United States for 10 years prior to the applicant's birth, five of which were after his 16th birthday, as required by section 201(g) of the Nationality Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ The AAO notes that this denial is without prejudice to the applicant, and she may file a new Form N-600 application with additional evidence, such as affidavits from individuals with direct knowledge of her father's residence prior to her birth, and additional family records.