U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: JUL 17 2009

IN RE: [redacted]

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant was born in Guatemala on February 7, 1944. His father, [redacted] was born in Suisun, California on May 31, 1913. The applicant claims that he acquired U.S. citizenship at birth, through his U.S. citizen father, pursuant to section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).

The director concluded that the applicant had failed to establish that his father resided in the United States for the requisite period of time, citing section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). The application was denied accordingly.

On appeal, counsel notes that the applicable law for transmitting citizenship in this case is section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), the law in effect at the time of the applicant's birth. Counsel further contends that the applicant has provided sufficient proof of his father's U.S. residence prior to his birth.

The AAO finds that the director failed to cite section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), as the applicable law in this case. "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 February 7, 1944. Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), 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 resided in the U.S. for ten years between May 31, 1913 and February 7, 1944, and that five of those years occurred after May 31, 1929, when his father turned 16.

The record contains, in relevant part, the following documentary evidence:

1) the applicant's birth certificate
2) the applicant's parent's marriage certificate
3) a copy of the Fourteenth (1920) and Fifteenth (1930) census, listing the applicant's father's name.

4) a copy of University High School records[1]
5) a copy of Polk Directories of Suisun, California
6) an affidavit by a private investigator
7) Department of State records, including correspondence from and the Foreign Economic Administration of the United States, passport and registration applications and expatriation records.

Notably, Exhibit 15 to the brief in support of the applicant's appeal contains a Department of State questionnaire where the applicant's father indicated that he resided outside the United States starting in 1933. Other documents obtained from the Department of State also indicate that the applicant began to reside outside the United States on September 6, 1933. *See e.g.* Exhibit 6, Application for Registration dated December 18, 1935 (indicating further that the applicant's father intended to return to the United States temporarily within one year). The documentary evidence submitted suggests that the applicant's father was working abroad for a U.S. company or the U.S. government. There is some indication that the applicant's father was maintaining an address in the United States, but no evidence that he was maintaining a place of general abode in the United States after September 1933. The applicant's father's reason for departing the United States or his claimed intent to return to the United States is not evidence that he was residing in the United States. The AAO specifically notes that that the applicant's father indicated to the State Department, in relevant part, that he had resided in the United States until the age of 21, and from 1933 to 1937 in Costa Rica. *See* Exhibit 15, Questionnaire Concerning Intent, question (h).

In *Savorgnan v. United States,* 338 U.S. 491, 505, (1950) the U.S. Supreme Court defined the term "residence" as the principal dwelling place of a person, or their actual place of general abode, without regard to intent. The U.S. Ninth Circuit Court of Appeals additionally held in *Alcarez-Garcia v. Ashcroft,* 293 F. 3d 1155, 1157 (9th Cir. 2002), that when determining the issue of residence, "[t]he inquiry is one of objective fact, and one's intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material." (Citations and quotations omitted)

The AAO finds that the documents provided with respect to [redacted] residence in the United States do not establish, by a preponderance of the evidence, that he resided in the United States for five years after turning 16.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in this case has not met his burden to establish that his father had the required residence in the United

[1] The applicant's brief on appeal indicates that copies of records from U.C. Berkeley were also provided to USCIS. Those records are not in the file currently before the AAO.

States. The applicant therefore cannot establish eligibility for U.S. citizenship pursuant to section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g). The appeal will be dismissed.

ORDER: The appeal is dismissed.