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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BUFFALO, NY Date: MAR 02 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 201 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born in Canada on February 4, 1943. His parents, as indicated on his birth certificate, are [redacted] and [redacted] The applicant's father was born in New York on December 9, 1909. The applicant's mother was not a U.S. citizen. The applicant's parents were married in Canada on July 9, 1935. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship under section 201 of the Nationality Act of 1940.

The field office director denied the application finding that the applicant had failed to establish that his father had the required residence in the United States. On appeal, the applicant, through counsel, maintains that his father resided in the United States for at least 10 years prior to his birth, five of which while over the age of 16. *See* Statement of Applicant on Form I-290B, Notice of Appeal to AAO; *see also* Applicant's Appeal Brief.

The AAO recognizes the general principle that 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. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1943. The Immigration and Nationality Act (the Act) went into effect on December 24, 1952. The Nationality Act of 1940 (the Nationality Act) is therefore applicable in this case.

Section 201(g) of the Nationality Act, 8 U.S.C. § 601(g), states 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. *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 . . . [1]

The applicant must thus establish that his father resided in the United States for 10 years prior to February 1943 (the applicant's date of birth), five of which were after December 1915 (the applicant's father's 16th birthday).[2]

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[1] Section 201(h) of the Nationality Act further states that "[t]he foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934." The AAO notes that the applicant has been residing in the United States since childhood.

[2] Section 201(i) of the Nationality Act, introduced in 1946, provided for transmission of U.S. citizenship from a parent who had resided in the United States for five years after the age of 12. This provision was only applicable to children of

The record contains, in relevant part, the applicant's birth certificate, the applicant's father's birth and death certificates, the applicant's father's obituary, the applicant's parents' marriage certificate, and affidavits executed by the applicant, his mother and older sister.

The record shows that the applicant's father was born in 1909 in the United States, where he resided until he moved to Canada in 1933, when he was 24 years old. The applicant explains in credible detail the nonexistence and unavailability of further documentation of his father's residence in the United States from 1909 to 1933. The record indicates that all of the applicant's father's relatives known to the applicant and his family are deceased. Nonetheless, the applicant, his mother and sister describe his father's life in the United States prior to the applicant's birth in probative detail. The applicant's father's obituary, published in a local New York newspaper, further attests to the applicant's father's residence in the United States from his birth until his early twenties. The preponderance of the evidence thus establishes that the applicant's father resided in the United States for 10 years prior to 1943, five of which were after 1915, as required for the applicant to acquire citizenship through his father under section 201(g) of the Nationality Act of 1940.

The regulation at 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 has met his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.

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parents who served in the U.S. armed forces during World War II. There is no indication in the record that the applicant's father served in the U.S. military.