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: ST. CROIX, USVI Date: SEP 08 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601

ON BEHALF OF APPLICANT:

[redacted]

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 $585. 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 application was denied by the Field Office Director, Saint Croix, U.S. Virgin Islands, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 17, 1941 in Saint Kitts and Nevis. The applicant claims his mother is a U.S. citizen by virtue of her birth in Saint Croix on November 7, 1902. The applicant's father was not a U.S. citizen. The applicant's parents were married in Nevis in 1925. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's claim finding that he had failed to establish that his mother had the required residence in the United States. The application was accordingly denied. On appeal, the applicant, through counsel, maintains that his mother had the required residence.

"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, 1028 n.3 (9th Cir. 2001) (citations omitted). The applicant was born in 1941. Section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601, is therefore applicable to this case.

> Section 201(g) of the Nationality Act states, in pertinent part, 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 years, 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 record does not contain evidence of the applicant's mother's residence in the United States. Additionally, as noted by the field office director, the applicant's mother was born in 1902 when the Virgin Islands were a territory of Denmark and she did not obtain U.S. citizenship.

Section 306(a) of the Immigration and Nationality Act of 1952 (the Act), 8 U.S.C. § 1406(a), provides, in relevant part, that persons born in the Virgin Islands prior to 1917 must have, *inter alia*, been residing in the United States, Puerto Rico, the Panama Canal or the Virgin Islands on February

25, 1927 in order to have acquired U.S. citizenship on that date. There is no evidence in the record indicating that the applicant's mother was residing in the Virgin Islands, the United States, Puerto Rico, or the Panama Canal on February 25, 1927. Indeed, the evidence in the record indicates that the applicant's mother was residing in Nevis. See Applicant's Parents' Marriage Certificate (issued in Nevis in 1925). The applicant did not acquire U.S. citizenship at birth because his mother was not a U.S. citizen. He is statutorily ineligible for U.S. citizenship under section 201 of the Nationality Act or any other provision of law.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant is statutorily ineligible to acquire U.S. citizenship and his appeal will therefore be dismissed.

ORDER: The appeal is dismissed.