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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**



E₂

DATE:

Office: YAKIMA, WA

FILE:

MAY 05 2011

IN RE:

Applicant:

APPLICATION:

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

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Yakima, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record indicates that the applicant was born on August 10, 1946 in the Former Soviet Union. The applicant's parents were native-born U.S. citizens, born in 1907 and 1919, respectively. They were married in Poland in 1938. The applicant has resided in the United States since 1991. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his U.S. citizen parents.

The applicant had previously filed several Forms N-600, Application for Certificate of Citizenship. They were denied by the field office director upon finding that his parents did not have the required residence in the United States and that the applicant had not fulfilled the retention requirements. The applicant claims he is eligible for citizenship upon taking of the Oath of Allegiance, pursuant to section 324(d) of the Act, 8 U.S.C. § 1435(d).

The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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) (internal citation omitted). The applicant in the present matter was born in 1946. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), therefore applies to the present case.

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 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.

Section 201 of the Nationality Act further required, in pertinent part,

. . . That, in order to retain [] 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.¹

Section 301(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c), “applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did not later comply with, the retention requirements of section 201(g) or (h) of the Nationality Act.” *See* 7 FAM 1133.5-2(c). Section 301(b) of the Act stated that a child who acquired citizenship at birth abroad . . . must be continuously physically present in the United States for a period of five years between the ages of fourteen and twenty eight in order to retain his or her U.S. citizenship. A two-year retention requirement was later substituted retroactively in 1972. *See* 7 FAM 1133.5-7.² The applicant was not physically present in the United States until 1991, after he was over the age of 28. He therefore cannot establish that he fulfilled the retention requirement applicable to his case.

The AAO notes that the director cited section 301 of the Act, 8 U.S.C. § 1401, as the applicable law. The Act was not in effect at the time of the applicant’s birth and is therefore inapplicable. Nevertheless, the director correctly considered the requirements of the applicable law which, as previously noted, is section 201(g) of the Nationality Act of 1940. However, the director did not consider the applicant’s claim under section 324(d) of the Act that he may regain U.S. citizenship lost upon failure to comply with retention requirements. The director’s decision must therefore be withdrawn. The matter will be remanded for consideration of the applicant’s claim under section 324(d) of the Act and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The director’s decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

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.”

² Public Law 95-432, effective October 10, 1978, subsequently repealed section 301(b) of the Act, and eliminated completely, the physical presence requirement for retention of U.S. citizenship. *See* 7 FAM 1133.2-2(d). However, the “[c]hange was prospective in nature.” *Id.* *See* 7 FAM 1133.5-13(a) and (c). The AAO notes that the applicant was over 26 years old on October 10, 1978.