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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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HOUSTON, TX

Date: APR 28 2009

IN RE: [REDACTED]

APPLICATION: Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453.

ON BEHALF OF RESPONDENT:

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The respondent's Certificate of Citizenship was cancelled by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On November 28, 2005, the district director issued a decision cancelling the respondent's Certificate of Citizenship. The district director's decision was based on a finding that the applicant had not provided any documentation of her father's required U.S. residence.¹ The respondent's Certificate of Citizenship was cancelled.

On appeal, the respondent maintains that the district director erred in cancelling her Certificate of Citizenship. The respondent submits several sworn declarations in support of her claim that her father resided in the United States as required.

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

The regulations at 8 C.F.R. § 342 outline the process for cancellation of a certificate of citizenship under the Act. The AAO notes that the district director properly notified the respondent of her intent to cancel the Certificate of Citizenship and afforded the respondent an opportunity to respond as required by the Act and the regulations. The AAO further notes that the Department of Homeland Security, through U.S. Citizenship and Immigration Services, has statutory authority to cancel a Certificate of Citizenship where the Certificate was illegally or fraudulently obtained. *See* Section 342 of the Act, 8 U.S.C. § 1453.

The applicant was born on May 30, 1949. She was therefore required to establish, pursuant to section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), that her father resided in the

¹ The applicant claimed that she acquired U.S. citizenship under section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), which provides, in relevant 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.

United States for ten years prior to 1949, five of which after 1939 (the applicant's father's 16th birthday). The applicant has resubmitted several sworn declarations in support of her claim that her father resided in the United States as required. The AAO notes that record suggests that the director properly considered this evidence prior to issuing the Notice of Cancellation.

The record indicates that the applicant's father's testimony contradicted the applicant's claim and the claims made in the declarations. The applicant's father is deceased. The AAO notes the contradictory testimony, and the fact that the declarations submitted are not detailed and in some cases do not even address the applicant's father's residence during the relevant period. The AAO further notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

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 record does not establish, by a preponderance of the evidence, that the applicant was entitled to citizenship.

The burden of proof in cancellation proceedings is on the government, and cancellation of a Certificate of Citizenship is authorized "if it shall appear to [the] satisfaction" of the Secretary of the Department Homeland Security" that the Certificate was illegally or fraudulently obtained. The AAO finds that the district director has met her burden of proof and that the respondent's Certificate of Citizenship was properly cancelled. The respondent's appeal will therefore be dismissed.

ORDER: The appeal is dismissed.