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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: AUG 24 2005

IN RE:

Applicant [REDACTED]

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the former
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Center Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant was born in Guyana on May 2, 1984. The applicant's father, [REDACTED] was born in Chicago, Illinois on August 31, 1959, and he is a U.S. citizen. The applicant's mother, June [REDACTED] was born in Guyana, and she became a U.S. citizen around 1992. The applicant's parents married in Kansas on April 5, 1982. The applicant presently seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)), based on the claim that she acquired U.S. citizenship at birth through her father.

The district director found that the applicant had failed to establish her father (Mr. [REDACTED] was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after Mr. [REDACTED] reached the age of fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

Counsel asserts on appeal that the applicant qualifies for U.S. citizenship through her father and that he will submit additional U.S. physical presence documents to further prove the applicant's citizenship claim. Counsel subsequently submitted Mr. [REDACTED] U.S. Social Security earnings statements and Mr. [REDACTED] college diplomas and certificates.

"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 May 2, 1984. Section 301(a)(7) of the former Act is therefore applicable to her citizenship claim.

Section 301(a)(7) of the former Act states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

In the present matter, the applicant must establish that her father was physically present in the U.S. for ten years between August 31, 1959 and May 2, 1984, and that five of those years occurred after August 31, 1973, when Mr. [REDACTED] turned fourteen.

The evidence relating to Mr. [REDACTED] physical presence during the requisite time period consists of the following:

A birth certificate reflecting that Mr. [REDACTED] was born in Chicago, Illinois on August 31, 1959. The birth certificate reflects that Mr. [REDACTED] parents resided in Chicago, Illinois and that his father was [REDACTED] of Tennessee, and his mother [REDACTED] of Ohio. The birth certificate additionally reflects that Mr. [REDACTED] mother had five other children prior to Mr. [REDACTED] birth.

Social Security Earnings statements reflecting that Mr. [REDACTED] earned the following amounts in the U.S. prior to the applicant's birth in 1984:

1976 - \$2219.00
1977 - \$2067.00
1978 - \$7536.00
1979 - \$955.00
1980 - \$0.00
1981 - \$46.00
1982 - \$1838.00
1983 - \$4213.00
1984 - \$209.00

A Kansas State University, Bachelor Of Science Degree issued to Mr. [REDACTED] on July 29, 1988.

A Kansas marriage license reflecting that Mr. [REDACTED] married the applicant's mother in Kansas on April 5, 1982, and that both resided in Manhattan, Kansas.

A May 10, 2004, notarized statement signed by Mr. [REDACTED] stating that he was born and raised in the U.S. and that he attached evidence establishing that he was physically present in the U.S. for ten years prior to his daughter's birth, five years of which were after the age of fourteen. (The AAO notes that the U.S. Internal Revenue Service account information submitted by Mr. [REDACTED] covers the years between 1994-1997, all subsequent to the applicant's birth).

A U.S. Passport issued to the applicant on July 30, 1985, which expired on July 29, 1990. The passport contains a stamp stating, "Cancelled New Application, 7-13-92." The passport additionally contains travel stamps indicating that the applicant traveled in 1985 and 1988.

A May 12, 2003 letter from the U.S. Department of State (DOS) Passport Services branch stating the DOS found no record of a Consular Report of Birth for the applicant. The letter states that the DOS did find a record of the applicant's Application for Passport [REDACTED] issued to the applicant on July 30, 1985 at the American Embassy in Georgetown, Guyana and expired on July 29, 1990. The letter states that the application shows the applicant was born in Guyana on May 2, 1984, and that she acquired U.S. citizenship through her father. The letter states further that the DOS enclosed an authenticated copy of the application to assist the applicant in documenting her U.S. citizenship. (The AAO notes that the record does not contain the application copy.)

A U.S. passport issued to the applicant's mother on July 14, 1992, valid through July 13, 2002.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *See Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989).

The AAO finds that the cumulative evidence presented in the applicant's case establishes that M [REDACTED] was probably physically present in the U.S. for a period of ten years between August 31, 1959 and May 2, 1984,

and that five of those years occurred after August 31, 1973, when Mr. [REDACTED] turned fourteen. The AAO notes that Mr. [REDACTED] parents are U.S. natives and that they resided in Chicago, Illinois at the time of Mr. [REDACTED] birth and had five other children. In addition, the Social Security earnings evidence submitted demonstrates that Mr. [REDACTED] began working in the U.S. at the age of seventeen or eighteen, and that he worked in the U.S. for approximately seven to eight years prior to the applicant's birth. The record reflects that Mr. [REDACTED] obtained a Kansas State University Bachelor of Science degree in 1988, and that he probably began his college studies around 1984. The record additionally reflects that Mr. [REDACTED] and the applicant's mother resided in Kansas prior to their marriage in April 1982. The AAO notes further that although the applicant's passport is no longer valid, the DOS determined that the applicant was a derivative U.S. citizen and issued the applicant a U.S. passport in 1985.¹

Based on all of the above factors, the AAO finds that the applicant has met her burden of establishing that she qualifies for U.S. citizenship under section 301(a)(7) of the Act. The appeal will therefore be sustained.

ORDER: The appeal is sustained.

¹ The AAO notes that in *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a *valid* U.S. passport is conclusive proof of U.S. citizenship. Prior to enactment of 22 U.S.C. 2705, a United States passport was regarded as prima facie evidence of United States citizenship.