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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE:  Office: NEW YORK, NY

Date: JUN 21 2005

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Israel on January 30, 1980. The applicant's father, [REDACTED] was born in Israel on [REDACTED]. The applicant claims that her father derived U.S. citizenship at birth through his U.S. citizen parents. The applicant's mother, [REDACTED] was born in Israel on April 4, 1949, and she is not a U.S. citizen. The record reflects that the applicant's parents married in Israel in 1979, and that they divorced in Israel in July 1989. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act), based on the claim that she acquired U.S. citizenship at birth through her father.

The district director found the applicant had failed to submit requested evidence relating to her paternal grandparent's U.S. citizenship and marriage status. The district director found further that the applicant had failed to submit requested evidence relating to her father's physical presence in the U.S. prior to her birth. The application was denied accordingly due to lack of prosecution.

On appeal, counsel submits new evidence relating to the applicant's grandfather's [REDACTED] physical presence in the United States. Counsel additionally indicates that the applicant has established she qualifies for citizenship under section 301(a)(7) of the former Act.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on January 30, 1980. Section 301(a)(7) of the former Act is therefore applicable to her derivative 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 and its outlying possessions 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 or its outlying possession for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

Thus the applicant must first establish that her father [REDACTED] was a U.S. citizen at the time of her birth. The applicant must then demonstrate that her father was physically present in the U.S. for ten years between the time of his birth on [REDACTED] and the time of the applicant's birth on [REDACTED] and that five of those years occurred after [REDACTED] when [REDACTED] turned fourteen.

The record contains the following evidence pertaining to [REDACTED] status as a U.S. citizen:

A Department of State, U.S. Foreign Service of the United States of America, Report of Birth for a Child Born Abroad of an American Parent or Parents (Report of Birth), registered and dated, November 19, 1956. The Report of Birth states that [REDACTED] was born on [REDACTED] in Tel Aviv, Israel, to [REDACTED] (father), born in Hartland Wisconsin, and [REDACTED] (mother), born in Romania and [REDACTED]

naturalized as a U.S. citizen. The Report of Birth reflects that Mr. And Mrs. [REDACTED] were married in New Jersey on April 21, 1945. The Report of Birth additionally reflects that [REDACTED] was issued U.S. passport [REDACTED] August 29, 1947, that he resided in the U.S. between [REDACTED] and that he was in the U.S. Army between [REDACTED]. The Report of Birth reflects further that [REDACTED] was issued U.S. passport [REDACTED] on August 29, 1947, that she was registered as an American citizen at the American Embassy in Tel Aviv on November 19, 1956, and that she resided in the U.S. from 1933-1947.

An Israeli Ministry of the Interior, Name Change Certificate dated March 9, 1976, reflecting that the applicant's father legally changed his name from [REDACTED] to [REDACTED].

An April 9, 2003, affidavit signed by [REDACTED] brother, [REDACTED] stating that he was born in Wisconsin on [REDACTED] and that [REDACTED] was born in Wisconsin on July 14, 1921. The affiant states that [REDACTED] resided with the family in the U.S. until he graduated from high school, and that [REDACTED] was in the U.S. Army between 1943 and 1946, prior to his emigration to Israel in 1947.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. The AAO finds that the above evidence establishes by a preponderance of the evidence that the applicant's father derived U.S. citizenship at birth through his U.S. citizen parents.

Nevertheless, the AAO notes that, although the record contains evidence relating to the applicant's paternal grandfather's physical presence in the United States prior to the applicant's birth, the record is devoid of any evidence relating to her father's physical presence in the United States during the requisite time period. Based on the lack of evidence that [REDACTED] was physically present in the United States at any time prior to the applicant's birth, and based further on the applicant's statement in her N-600, Application for Certificate of Citizenship, that her father began residing in the United States in 1991 (eleven years after the applicant's birth), the AAO finds that the applicant has failed to establish that her father met the physical presence requirements set forth in section 301(a)(7) of the former Act. The applicant has therefore failed to establish that she qualifies for a certificate of citizenship, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.