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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SEATTLE, WA

Date: MAR 10 2005

IN RE:

Applicant

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g),

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Seattle Washington, 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 Belarus on August 10, 1946. The applicant's mother, [REDACTED] maiden name, [REDACTED] was born on December 8, 1919, in Massachusetts, and she was a United States (U.S.) citizen. The applicant's father, [REDACTED] was born in Belarus and he was not a U.S. citizen. The applicant's parents married on June 12, 1938, in Belarus.

The applicant first filed a Form N-600, Application for Certificate of Citizenship (N-600 application) on June 7, 1999. The application was denied by the district director, Seattle, Washington on November 2, 1999, based on the applicant's failure to establish that his U.S. citizen mother resided in the U.S. for five years after she turned sixteen years old, and based on the applicant's failure to meet citizenship retention requirements, as set forth in section 201(g) of the Nationality Act of 1940 (Nationality Act); 8 U.S.C. § 601(g), (referred to in the decision as section 301(g) of the Immigration and Nationality Act (the Act), as amended).

The applicant filed a second N-600 application on December 13, 2001. The 2001 application was denied by the district director, Seattle, Washington, on July 12, 2002, based on the applicant's failure to establish that he met citizenship retention requirements set forth in section 201(g) of the Nationality Act (referred to in the decision as section 301(g) of the Act, as amended). Specifically, the district director's decision stated that:

According to your affidavit submitted with your current N-600 application, your citizen parent fulfilled the physical presence requirement of section 301(g) of the Act. However, you never resided in the United States until 1991 when you were admitted with a B-2 nonimmigrant visa. You never met the retention requirements since you were 35 years old when you first entered the United States. Therefore, your application for a certificate of citizenship (Form N-600) is denied.

Neither the June 1999 nor the July 2002 decisions were appealed to the AAO.

The district director reconsidered his July 12, 2002, decision pursuant to counsel's assertion that section 324(d)(1) of the Act remedied the applicant's citizenship retention requirements by allowing the applicant to regain his U.S. citizenship by taking the oath of allegiance.<sup>1</sup>

However, on August 18, 2003, the district office issued a letter to the applicant stating that:

The paragraph from the denial notice, dated on July 12, 2002, which reads, "According to your affidavit submitted with your current N-600 application, your citizen parent fulfilled the physical presence requirement of Section 301(g) of the Act" was made in error.

A review of records indicated that your parent did not fulfill the requirement of section 301(g) of the Act, and you never have had acquire [sic] citizenship of the United States.

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<sup>1</sup> Amendments made to the Act in 1978 and Title I of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA) allowed, with limited exceptions, for oath of allegiance restoration of U.S. citizenship to former citizens who had lost their nationality by failing to comply with retention requirements set forth in the Immigration and Nationality Act of 1952 and the Nationality Act of 1940.

Please provide evidence that indicate [sic] your citizen parent's physical presence in the United States for 10 years, at least five years of which were after attaining the age of sixteen years."

In a decision dated April 14, 2004, the district director, Seattle, Washington found the applicant had failed to establish that he had derived U.S. citizenship at birth through his mother. Specifically, the district director found that the application and affidavit evidence submitted by the applicant contained inconsistencies and failed to demonstrate that his mother resided in the U.S. for five years after she turned sixteen, as required by section 201(g) of the Nationality Act (referred to in the decision as section 301(g) of the Act, as amended). The application was denied accordingly.

On appeal, counsel asserts that the affidavit evidence submitted by the applicant establishes, by a preponderance of the evidence, that the applicant's mother (Ms. [REDACTED]) resided in the United States for five years after her sixteenth birthday, and that the applicant is therefore entitled to citizenship under section 201(g) of the Nationality Act. Counsel asserts that the district director's decision applied a higher standard of proof than the preponderance of the evidence standard accepted in citizenship cases. Counsel asserts further that the district director erroneously required the applicant to establish that his mother was "physically present", rather than that she "resided" in the U.S. for the required period of time set forth in section 201(g) of the Nationality Act. Counsel asserts that the previous 1999 and 2002 district director decisions, as well as e-mail correspondence with immigration officer, Mr. [REDACTED] found that affidavit evidence submitted in the applicant's case established Ms. [REDACTED] met the residence requirements set forth in section 201(g) of the Nationality Act. Counsel additionally asserts that the district director erred in not providing the applicant an opportunity to be interviewed so that he could clarify perceived inconsistencies in his own affidavits and declarations, and counsel indicates that the perceived inconsistencies contained in the affidavits submitted by the applicant are due to translation and situational errors and errors made by persons who previously prepared the applicant's certificate of citizenship applications.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on August 10, 1946. Section 201(g) of the Nationality is therefore applicable to his derivative citizenship claim.

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.

In the present matter, the applicant must establish that his mother resided in the U.S. for ten years between December 8, 1919 and August 10, 1946, and that five of those years occurred after December 8, 1935, when Ms. [REDACTED] turned sixteen.

The evidence pertaining to Ms. [REDACTED] residence in the United States during the requisite time period consists of the following:

A Massachusetts birth certificate reflecting that [REDACTED] (accepted by the district

director as Ms. [REDACTED] was born in Lowell, Massachusetts on December 8, 1919.

The N-600 application filed by the applicant in June 1999, stating that his mother resided in the United States from 1919 to 1922, and from 1924 to 1938. *See* Response to question #9.

An affidavit written by the applicant and attached to his 1999, N-600 application, stating that his mother moved with her family to Poland (presently Belarus) in 1922, and that she returned with her family to the U.S. in 1924. The applicant states that his mother resided in the U.S. with her family until 1938, when she returned to Belarus with her family. The applicant states that his mother married his father in Belarus in June 1938, and that, “[a]s my mother told me they were going to come back to the USA in 1939 but the World War II has broken out . . . . Thus my parents had no opportunity to leave the country for the USA.” The applicant states further that “[i]n 1981 my mother has died in the city of Dubna, Byelorussia, not being able to come back to her motherland – USA.”

An affidavit attached to the applicant’s 1999, N-600 application, dated April 12, 1999, and signed in Belarus by Ms. [REDACTED] sister, [REDACTED] stating in pertinent part that Ms. [REDACTED] resided with the affiant at [REDACTED] Massachusetts, from the time of her birth on December 8, 1919 until her departure to, then, Poland in 1938, when she married Mr. [REDACTED]

An affidavit attached to the applicant’s 1999, N-600 application, dated April 12, 1999, and signed in Belarus by [REDACTED] stating in pertinent part that Ms. [REDACTED] resided “[i]n Poland (presently – Byelorussia, city of Dubno) since her arrival from the United States of America in February, 1938.”

A second N-600 application filed by the applicant in December 2001, stating that his mother resided in the United States from 1919 to 1922, from 1924 to 1938, and from 1938 to 1941. *See* Response to question #9.

An affidavit written by the applicant as part of his 2001, N-600 application stating that his mother moved with her family from the United States to Belarus in 1922, and that she moved back to the U.S. with her family in 1924. The applicant states that his mother and her family returned to Belarus in 1938, and that after his mother’s marriage in Belarus, she returned with her husband to the U.S. until May 1941, when his mother and father returned to Belarus

August 2002 through November 2002, e-mail correspondence between counsel and immigration officer, Mr. [REDACTED]. Mr. [REDACTED] acknowledges that pursuant to amendments made to immigration law, the applicant is not required to meet section 201(g) citizenship retention requirements. Mr. [REDACTED] states further on August 19, 2002, that, “[I] will need an A Number to this individual’s file to give you a definitive answer, however if this N-600 was denied for the sole reason that the child did not meet the retention requirements then [it] was denied in error.” Mr. [REDACTED] states in a final e-mail dated November 18, 2002, that his review of the file revealed that the applicant was denied for two reasons - physical presence of the parents and retention requirements of the child - and that the record reflects that the applicant’s mother “[o]nly resided in the U.S. for at most 3 years after her age of 16.” Mr. [REDACTED] subsequently states that he concurs with the denial of citizenship that was sent to the applicant on July 12, 2002.

The following affidavits signed in Belarus, discussing Ms. [REDACTED] residence in the U.S., submitted in response to an August 18, 2003, Seattle, Washington, district office request for evidence of Ms. [REDACTED] physical presence:

A second affidavit signed on June 9, 1999, by Ms. [REDACTED] sister, [REDACTED] stating that Ms. [REDACTED] returned to the U.S. in June 1938, after her wedding, and that Ms. [REDACTED] resided in the U.S. until May of 1941.

A second affidavit, signed on June 9, 1999 by [REDACTED] stating that Ms. [REDACTED] went to the U.S. in June 1938 after her wedding, and that she resided in the U.S. until May 1941.

An affidavit signed by [REDACTED] on June 6, 2000, stating that he was born in 1920 in Dubno, Belarus, and confirming that Ms. [REDACTED] arrived in Belarus from the U.S. in May of 1941.

A second affidavit signed on February 23, 2001 by [REDACTED] stating that he was born in 1920 in Dubno, Belarus, and that he confirms that Ms. [REDACTED] departed to the U.S. in 1924 and returned to Dubno, Belarus in May 1938.

An affidavit signed on February 22, 2001, by [REDACTED] stating that he was born in 1915 in Dubno, Belarus, and that he confirms that Ms. [REDACTED] departed to the U.S. in 1924 and returned to Dubno, Belarus in May of 1938.

An affidavit signed on May 6, 2000, by [REDACTED], stating that he was born in 1921 in Dubno, Belarus, and confirming that Ms. [REDACTED] arrived from the U.S. in May of 1941.

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 in order to satisfy the preponderance of evidence standard, it is generally sufficient that the evidence establish that something is probably true.

The AAO finds that the cumulative evidence presented in the present matter establishes by a preponderance of the evidence that Ms. [REDACTED] resided in the U.S. for a period of more than ten years between 1919 and 1922, and between 1924 and 1938. The AAO finds, however, that the applicant has failed to establish by a preponderance of the evidence, that his mother resided in the U.S. for at least five years after she turned sixteen in December 1935, and prior to the applicant's birth, as required by section 201(g) of the Nationality Act.

The AAO finds that the previous 1999 and 2002, district director decisions, and the e-mail correspondence with immigration officer Brown do not demonstrate that the district has previously found the applicant to be eligible for citizenship but for his failure to meet section 201(g) retention requirements.<sup>2</sup> The AAO notes

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<sup>2</sup> The AAO notes that in the present matter, the district director's discussion of U.S. "physical presence" requirements pursuant to section 301(g) of the Act, rather than "residence" requirements pursuant to section 201(g) of the Nationality Act is deemed harmless since the applicant has failed to establish by a preponderance of the evidence that Ms. [REDACTED] was, in any manner, present in the U.S. after 1938.

that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See generally, Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002).

In the present matter, the November 2, 1999, denial of the applicant's N-600 application clearly states that he failed to establish his mother resided in the U.S. for five years after she turned sixteen years old. The AAO notes further that, although the July 12, 2002, denial of the applicant's N-600 application states, "[a]ccording to your affidavit submitted with your current N-600 application, your citizen parent fulfilled the physical presence requirement of section 301(g) of the Act," the decision contains no actual analysis or finding that the applicant established his mother's required physical presence in the United States. Moreover, upon reconsideration of the retention requirement issue in the applicant's case, the district office stated in an August 18, 2003, letter requesting additional physical presence evidence for Ms. [REDACTED], that its July 2002, paragraph stating, "[a]ccording to your affidavit submitted with your current N-600 application, your citizen parent fulfilled the physical presence requirement of section 301(g) of the Act," was made in error.

The AAO additionally notes that Mr. [REDACTED] stated in e-mail correspondence with counsel, prior to his review of the applicant's A file, that the applicant's N-600 was denied in error if the July 12, 2002, denial was based solely on the applicant's failure to meet retention requirements. After review of the applicant's A file, however, Mr. [REDACTED] stated that he concurred with the July 2002 denial of the applicant's case, because the application was denied not only on the basis that the applicant had failed to meet retention requirements, but also based on Ms. [REDACTED] failure to meet U.S. physical presence requirements after the age of sixteen.

In addition to the above finding, the AAO finds that the affidavit evidence contained in the record fails to establish by a preponderance of the evidence that Ms. [REDACTED] resided in the United States at any time after 1938.

The AAO notes the Board of Immigration Appeals holding 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.)

The AAO finds that the evidence in the present record contains important discrepancies relating to the dates that Ms. [REDACTED] resided in United States. The applicant attempts to explain in a letter submitted on appeal, that the U.S. residence information contained in his 2001 N-600 application is accurate, and that errors were made in his initial 1999 N-600 application due to poor translations of documents, his failure to pay attention to information contained in his application due to his daughter's illness and his emotional state, and due to poor preparation of his application by his previous attorney. The AAO finds, however, that the explanations provided by the applicant are unsupported by any corroborative evidence and that the explanations are unconvincing.

The record reflects that the applicant stated in his initial N-600 application, filed in June 1999, that his mother resided in the U.S. from 1919 to 1922, and from 1924 to 1938. The applicant states clearly in an affidavit attached to his June 1999, N-600 application, that his mother wanted to return to the U.S. in 1939, but that she had no opportunity to return due to the outbreak of World War II, and that she died in Belarus without being able to come back to the United States. Two attached affidavits submitted with the applicant's 1999, N-600 application (written by [REDACTED] additionally state that

Ms. [REDACTED] arrived in Belarus from the U.S. in 1938. A second N-600 application filed by the applicant in December 2001 states, however, that his mother resided in the U.S. from 1919 to 1922; 1924 to 1938 and 1938 to 1941. Moreover, new affidavits by the applicant and by [REDACTED] state that Ms. [REDACTED] returned to the U.S. in 1938 after her marriage to the applicant's father.

The AAO finds that the inconsistencies between the N-600 applications and affidavits discussed above cast serious doubt onto the claims made by the affiants. The affidavits are therefore not found to be probative regarding Ms. [REDACTED] residence in the United States.

The AAO finds that the remaining affidavits submitted by the applicant also lack probative value. The affiants fail to establish personal knowledge of Ms. [REDACTED] residence after 1938. Moreover, the affiants fail to establish the source of their knowledge, or the exact dates and places of Ms. [REDACTED] residence in the United States. The affidavits additionally lack specific detail regarding the dates, or frequency and level of contact between the affiants and the applicant's mother. Furthermore, the affidavits lack corroborative evidence and they are, in general, vague and lacking in material detail.

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. The AAO finds that the applicant has failed to establish by a preponderance of the evidence that his mother resided in the United States for at least five years after the age of sixteen, as required by section 201(g) of the Nationality Act. The AAO finds further that because the basis of the applicant's denial related to his failure to meet the burden of proof of establishing U.S. citizenship, the present matter is not suitable for remand. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.