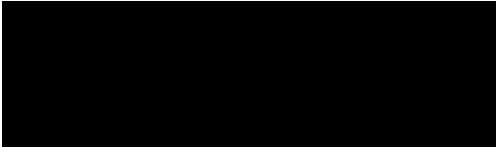


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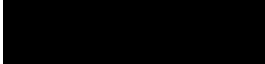
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



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FILE:



Office: NEW YORK, NY

Date: SEP 26 2005

IN RE:

Applicant:



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

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record does not contain a birth certificate or record for the applicant, however, in her Form N-600, Application for Certificate of Citizenship (N-600 application) the applicant claims that she was born in Tortola, British West Indies on November 7, 1942, under the name [REDACTED]. The applicant claims that her father is [REDACTED] and that he was born in St. Thomas, U.S. Virgin Islands (U.S.V.I.) and is a U.S. citizen.<sup>1</sup> The applicant claims that her mother is [REDACTED] Webb, and that she was not a U.S. citizen. The record contains a marriage certificate reflecting that [REDACTED] and [REDACTED] were married on October 1, 1942. The applicant 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.<sup>2</sup>

The district director determined that the applicant had failed to establish her identity, her date of birth, or that she was the daughter of a U.S. citizen. The district director determined further that the applicant failed to establish that [REDACTED] was physically present in the United States or its outlying possessions for a period of ten years prior to the applicant's birth, at least five of which were after he reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts the district director should have afforded the applicant an opportunity to submit DNA evidence to establish that [REDACTED] is her father. Counsel asserts further that the evidence contained in the record establishes the applicant's identity and date of birth by a preponderance of the evidence, and that the evidence establishes that [REDACTED] was physically present in the United States or its outlying possessions for the requisite time period set forth in section 301(a)(7) of the former Act.<sup>3</sup> 8 C.F.R. § 341.1 provides in pertinent part that:

An application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) or to have acquired or derived United States citizenship as specified in section 341 of the Act shall be submitted on Form N - 600 in accordance with the instructions thereon, accompanied by the fee specified in Sec. 103.7(b)(1) of this chapter. **The application shall be supported by**

<sup>1</sup> See section 306 of the Immigration and Nationality Act, 8 U.S.C. § 1406.

<sup>2</sup> 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.

<sup>3</sup> The AAO notes that no DNA evidence was submitted prior to, or on appeal.

**documentary and other evidence essential to establish the claimed citizenship, such as birth, adoption, marriage, death, and divorce certificates.** (Emphasis added).

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. 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).

N-600 application instructions state further that in support of the application, an applicant must submit a certified birth certificate or record issued by a civilian authority in the country of birth. N-600 application instructions additionally state that:

If it is not possible to obtain any one of the above documents, you must establish why the evidence is not available. You may be required to submit an original written statement from the relevant government or other authority explaining the reasons for the unavailability of the document(s).

Other alternative documents include:

Baptismal certificate: [S]howing the date and place of the child's birth, date of baptism, the names of the godparents, if known.

Church records: [I]ssued within two months of birth.

School record: [S]howing the date of admission to the school, the child's date of birth or age at that time, place of birth, and the names and places of birth of parents, if shown in the school records.

Census records: [S]howing the name(s) and place(s) of birth, and the date(s) of birth or age(s) of the person(s) listed.

Affidavits: Written statement sworn (or affirmed) to by two persons who have personal knowledge of the claimed event (i.e., the date and place of a birth . . .) Each affidavit should contain . . . full information concerning the event; and complete details concerning how he or she acquired knowledge of the event.

*See* N-600 application. The present record does not contain a birth certificate or record for the applicant. Instead, the record contains the following evidence pertaining to the applicant's date of birth, identity and her relationship to [REDACTED]

An April 9, 2002, letter from the Registry of the Supreme Court, Tortola, Virgin Islands stating that, "[a] diligent search was made to locate the birth record of [REDACTED] but no record was found for the named person."

A Certificate of Baptism obtained on April 22, 2002, stating that [REDACTED] was baptized at the Church of St. Peter and Paul Cathedral in St. Thomas, US Virgin Islands on April 5, 1966. The Certificate of Baptism states that [REDACTED] is the child of [REDACTED] and that she was born in St. Thomas, U.S. Virgin Islands on November 7, 1942.

Documentation obtained from the Military National Personnel Records Center on

November 22, 2004, reflecting in pertinent part that:

filed an Application for National Service Life Insurance, dated September 7, 1944, listing (wife) and (daughter) as beneficiaries, and the beneficiaries' addresses were listed as

filed an Application for Dependency Benefits, dated September 7, 1944 listing as his wife and his daughter, and the beneficiaries' addresses were listed as

An October 2, 1944 Army personnel authorization for to receive a family dependents allowance from the U.S. Army for and

A March 16, 1998 affidavit signed by stating in pertinent part that is his daughter. states that he married Virgin Gorda, British West Indies on October 1, 1942, and that thereafter, his employment with the U.S. Engineering Department required him to depart from St. Thomas to Puerto Rico. states that "[d]uring the above noted employment related absence in Puerto Rico, due to a misunderstanding on the part of U.S. Immigration Officer Denny, was deported to Tortola, B.W.I. notwithstanding that she was eight months pregnant with our child who was subsequently named states that his wife remained in Tortola while the deportation error was resolved by states that was listed as his dependent and received dependent's allotment benefits from the U.S. government. states further that was christened in U.S.V.I., and that she obtained all of her schooling, worked and voted on St. Thomas.

An undated letter signed by stating in pertinent part that health records, school records and census records are difficult to locate due to disasters, poor record keeping and poor record storage in the U.S.V.I.

A birth certificate reflecting that was born to (father) and (mother) in St. Thomas, U.S. Virgin Islands on April 25, 1924.

An April 22, 2002 affidavit signed by stating that he was born in St. Thomas, Virgin Island on February 28, 1923, and that he has known the applicant and her father all of his life. The affiant states that the applicant was born in November 1942, and that she was raised in St. Thomas and attended school in St. Thomas.

An April 25, 2002 affidavit signed by stating that she is the sister of the applicant's mother, and the applicant's maternal aunt. The affiant states the applicant was born at sea because her mother was an illegal alien and could not enter into the Virgin Islands. The affiant states that at the time of her birth, the applicant was given to her paternal grandmother, and that the applicant never saw her mother again. The affiant states that the applicant spent most of her life in St. Thomas, and that she attended school and worked in St. Thomas.

An April 25, 2002 affidavit signed [REDACTED] stating that she is [REDACTED] sister. The affiant states that [REDACTED] enlisted in the U.S. Army in 1942, and that [REDACTED] first daughter, [REDACTED] was born at sea when her mother, [REDACTED] was traveling to St. Thomas. The affiant states that his mother, the applicant's grandmother, raised the applicant from infancy to adulthood in St. Thomas, U.S.V.I.

An affidavit dated May 15<sup>th</sup> (no year noted) signed by [REDACTED] stating that [REDACTED] is her brother and that he is a native of St. Thomas, U.S. Virgin Islands. The affiant states that [REDACTED] married [REDACTED] in the 1940s and that [REDACTED] their daughter and that she lived in St. Thomas until she moved to the United States.

A Marriage Certificate reflecting that [REDACTED] married [REDACTED] in St. Thomas, U.S. Virgin Islands on October 1, 1942.

A Birth Certificate reflecting that [REDACTED] had a child born in St. Thomas, V.I. on July 14, 1962.

A Death Certificate reflecting that [REDACTED] died on February 20, 2001 in Connecticut. The death certificate states that the deceased was born in St. Thomas, VI, that she was widowed and that her last spouse was [REDACTED]

The AAO finds that although the record contains Military Personnel Records information reflecting that [REDACTED] claimed [REDACTED] his daughter in 1944 when he applied for life insurance and family dependency benefits, these applications alone do not establish [REDACTED] paternity over the applicant. Nor do the applications establish when the applicant was born. The AAO finds that based upon a review of all of the evidence, the applicant has failed to establish by a preponderance of the evidence where she was born, the circumstances of her birth, or who she was born to. The record does not contain a government statement explaining the reason for the unavailability of the applicant's birth certificate. The AAO notes further that the baptismal certificate submitted by the applicant was issued April 1966, more than twenty years after the applicant's claimed birth date. The record contains no evidence to establish the basis on which the applicant's date of birth and parental information were recorded on the baptismal certificate, and the record contains no other church records or information relating to the applicant. Moreover, despite affiant claims that the applicant attended school in St. Thomas, the record contains no school records to corroborate these claims or to corroborate the applicant's claims regarding her date of birth or her parental information. The AAO notes further that the affidavits contained in the record lack corroborative evidence or information and they fail to establish that the affiants had personal knowledge of the applicant's paternity or date of birth. Additionally, the AAO notes that the evidence submitted contains material discrepancies relating to where the applicant was born (in Tortula, B.W.I. according to the N-600 application, St. Thomas, U.S.V.I. according to the applicant's baptismal certificate, and at sea according to affiant accounts), who the applicant lived with (her maternal grandmother according to affiant accounts, and with her mother according to [REDACTED] Application for Life Insurance and Dependency benefits), and where the applicant's mother was born (British West Indies according to the N-600 application and affiant accounts and U.S.V.I. according to the mother's death certificate).

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. The AAO finds that the applicant in the present matter has not met her burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.