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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CHICAGO, IL (INDIANAPOLIS, IN) DATE AUG 07 2006

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in Canada on July 10, 1955. The applicant's mother, Grace [REDACTED], was born in Blaine, Washington on August 7, 1913, and she was a U.S. citizen. The applicant's father was born in Canada, and he is not a U.S. citizen. The applicant's parents married in Canada on September 22, 1932. 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 mother.

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

On appeal counsel asserts that the Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) admitted the applicant into the United States as a U.S. citizen on several occasions. Counsel asserts that the applicant has therefore established by a preponderance of the evidence that she is a U.S. citizen. Counsel asserts further that U.S. Census and affidavit evidence establishes by a preponderance of the evidence that Ms. [REDACTED] was physically present in the U.S. for the requisite time period set forth in section 301(a)(7) of the former Act.

The AAO finds the assertion that the Service (CIS) has previously determined that the applicant is a U.S. citizen, to be unconvincing. To support this assertion counsel submits affidavits written by the applicant, her husband and her two children stating that they witnessed U.S. Immigration officials admitting the applicant into the United States as a U.S. citizen. Counsel also submits a copy of a November 27, 1988, U.S. Department of Treasury cash receipt issued to the applicant reflecting that she was assessed a customs fee on a jacket she'd purchased. In addition, counsel cites to the U.S. Circuit Court of Appeals legal decisions *Lee Hon Lung v. Dulles*, 261 F.2d 719 (9th Cir. 1958), *Delmore v. Brownell*, 236 F.2d 598 (3rd Cir. 1956), and *Montana v. Rogers*, 278 F.2d 68 (7th Cir. 1960).

The AAO notes that the *Lee Hon Lung* and *Delmore* decisions cited to by counsel, involve cases in which the Board of Special Inquiry and Commissioner of Immigration, respectively, made written determinations regarding U.S. citizenship. The record in the present matter contains no written determination by the Service (CIS) regarding a person's U.S. citizenship. Moreover, the *Montana* decision cited to by counsel clarified that where immigration officers erroneously admitted an individual into the United States as a U.S. citizen, the showing of citizenship:

[W]as rebutted convincingly by the showing that the Immigration officers committed legal error in designating plaintiff as a citizen at the time of his entry Such designation of plaintiff's citizenship was neither the formal adjudication in *Lung* nor the considered determination in *Delmore*.

See Montana, supra at 72 (Citing *Lee Hon Lung, supra* and *Delmore, supra*).

“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 in Canada in 1955. Section 301(a)(7) of the former Act is therefore applicable to her U.S. 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 thus establish that her mother was physically present in the U.S. for ten years between August 7, 1913 and July 10, 1955, and that five of those years occurred after August 7, 1927, when Ms. [REDACTED] turned fourteen.

The evidence relating to Ms. [REDACTED]’s physical presence in the U.S. during the requisite time period consists of the following:

A Washington State Certificate of Birth reflecting that Ms. [REDACTED] was born on August 7, 1913 in Blaine Washington.

1930 U.S. Census report reflecting that Ms. [REDACTED] resided with her family in the State of Washington, as of April 1, 1930.

An affidavit signed on August 11, 2004 by [REDACTED] born December 28, 1922, stating that Ms. [REDACTED] was her mother’s sister, and that Ms. [REDACTED] lived with her family during Ms. [REDACTED]’s teen years until 1930, when she moved back to Canada. The affiant indicates that Ms. [REDACTED] stayed frequently in the United States with family throughout her life

An affidavit signed by [REDACTED] born in Canada on December 16, 1941, stating he is Ms. [REDACTED]’s son, that his mother moved to Canada in 1918 with her parents, that his mother returned to the U.S. with her older sister in 1923, and that she remained in the U.S. until approximately 1930. The affiant states that Ms. [REDACTED] lived with family members in the U.S. for extended periods of time throughout her life, and that he lived with Ms. [REDACTED] in Olympia, Washington from August 1944 through 1946.

An affidavit signed on December 15, 2004 by the applicant attesting to her mother’s residences and circumstances prior to the applicant’s birth.

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 birth certificate and 1930 U.S. Census evidence contained in the record establish by a preponderance of the evidence that Ms. [REDACTED] was physically present in the United States in 1913 and in

1930. The AAO notes, however that the affidavit evidence submitted by the applicant and the applicant's brother contain no personal knowledge as to Ms. [REDACTED] physical presence in the United States prior to their births. The AAO notes further that the affidavits from the applicant's brother and the applicant's cousin are uncorroborated by independent evidence, and lack material details regarding the dates and places that Ms. [REDACTED] lived in the United States. The affidavits therefore lack probative value as to Ms. [REDACTED]'s U.S. physical presence.

Upon thorough review of the record, the AAO finds that the totality of the evidence submitted fails to establish by a preponderance of the evidence that Ms. [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 August 7, 1927, when Ms. [REDACTED] turned fourteen. The applicant has therefore failed to meet her burden of proof in the present matter, and the appeal will be dismissed.

ORDER: The appeal is dismissed.