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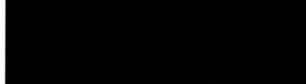
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: NEW YORK

Date: **OCT 10 2006**

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under section 301 of the former Immigration and Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, and 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 November 21, 1958. The applicant's mother, [REDACTED] was born in New Jersey on March 17, 1935, and she was a U.S. citizen at the time of the applicant's birth.¹ The applicant's father, [REDACTED] was born in Canada on November 1, 1924, and he is not a U.S. citizen. The record reflects that the applicant's parents married on September 24, 1957. The applicant seeks a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his mother.

The applicant filed his Form N-600 application on December 22, 2000. On August 18, 2002, the district director issued a request for evidence to the applicant, instructing the applicant to provide: 1.) the original naturalization certificate of the applicant's mother; 2.) the applicant's mother's original birth certificate; 3.) documentation to show that the applicant's mother was physically present in the United States for ten years prior to the applicant's birth, two of which were after her 14th birthday, such as school records, medical records, census data, or tax documents, and; 4.) photographs of the applicant. The record does not contain a response from the applicant to the request for evidence. On December 14, 2004, the district director denied the application based on the fact that the applicant failed to respond to the request for evidence, citing the authority of the regulation at 8 C.F.R. § 335.7.

On appeal, the applicant asserts that he is eligible for a certificate of citizenship. The applicant states that the documentation requested in the district director's request for evidence was already in the possession of Citizenship and Immigrations Services (CIS), as the applicant's mother had previously filed such documents in connection with her own immigration applications, and thus they should be in her own file. *Statement from Applicant*, dated December 27, 2004. The applicant now submits records of his mother's attendance at schools in the United States, and copies of his correspondence to such schools in order to obtain the records. The applicant notes that the requested original documents are in his possession, and he is able to provide them if necessary. The applicant did not submit the requested photographs.

"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 in the present matter was born in 1958. Section 301(a)(7) of the former Act therefore applies to the present case.

Section 301(a)(7) of the former Act states 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 possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable

¹ It is noted that the applicant's mother lost her U.S. citizenship in July 1981, yet she again became a U.S. citizen by naturalization on May 17, 1999.

service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Upon review, the AAO finds that the applicant failed to respond to the district director's request for evidence. The district director requested documentation that directly related to a material line of inquiry. Specifically, the district director requested documentation to reflect whether and when the applicant's mother was present in the United States prior to the applicant's birth. Pursuant to section 301(a)(7) of the former Act, the applicant must show that his mother "was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years." By failing to provide probative evidence, the applicant cut off this material line of inquiry. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).²

The applicant asserts that the requested documentation was already held by CIS, as it should be contained in his mother's prior immigration filings. However, the present matter is separate and distinct from the prior applications of the applicant's mother. The applicant bears the burden to submit sufficient evidence into the current record in order to clearly show that he meets the requirements of section 301(a)(7) of the former Act. *See* 8 C.F.R. 341.2(c). He may not rely on documentation submitted in connection with other immigration matters.

On appeal, the applicant now submits a portion of the evidence requested by the district director. Where, as here, an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, he should have submitted the documents in response to the district director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The applicant submits documentation regarding his mother's physical presence and the applicant's efforts to obtain such documents. It is noted that the applicant's correspondence generated in his effort to obtain evidence of his mother's presence took place in December 2004 and January 2005, after the district director issued her denial. Thus, the record does not reflect that the applicant made a good faith effort to respond to the district director's request for evidence, issued on August 18, 2002.

Based on the foregoing, the district director correctly denied the application due to the applicant's failure to respond to a request for evidence, pursuant to the regulation at 8 C.F.R. § 103.2(b)(14). Therefore, the application may not be approved and the appeal must be dismissed.

It is noted that, although the present application may not be approved, this dismissal is without prejudice to the applicant and he may file a new application with all of the required evidence if he chooses.

² It is noted that the district director cited the regulation at 8 C.F.R. § 335.7 as the basis for denying the application. However, 8 C.F.R. § 335.7 applies to applications for naturalization. The applicant seeks to be recognized as a U.S. citizen by birth, not to become a U.S. citizen through naturalization. Thus, 8 C.F.R. § 335.7 does not apply. However, the applicant was not prejudiced by the district director's reference to 8 C.F.R. § 335.7, as the district director's reasoning was appropriate pursuant to 8 C.F.R. § 103.2(b)(14).

The regulation at 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 these proceedings, the applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.