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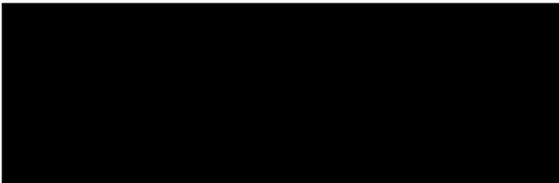
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FILE: [REDACTED] Office: DALLAS, TX Date: APR 30 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 309(a) and 301(g) of the Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a) and 1401(g)

ON BEHALF OF APPLICANT:



PUBLIC COPY

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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 16, 1947 in Germany. The applicant's natural father, [REDACTED], was born on November 7, 1924 in rural Lecompte, Louisiana. The applicant's mother, [REDACTED], was a German citizen at the time of his birth and has subsequently acquired lawful permanent resident status in the United States. The record does not establish that the applicant's parents married. Therefore, the applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father

Based on the evidence of record, the district director determined that the applicant had failed to prove that his paternity had been established by legitimation, either in Germany or in Louisiana. Accordingly, she denied the application.

On appeal, counsel contends that the district director erred in determining that the applicant was never legitimated under the laws of his or his father's domicile. He indicates that he intends to submit a brief and/or evidence to the AAO within 30 days.

Subsequent to the filing of the appeal, counsel has twice requested and received extensions in which to submit a brief, the last of which expired on or about March 25, 2007. On April 16, 2007, the AAO contacted counsel to ask for any materials submitted in connection with the appeal. Counsel responded with a third request for an extension, indicating that the Louisiana State University Law School professor preparing an opinion on legitimation in Louisiana had not yet completed her work. The extension will not be granted. The AAO informed counsel on January 24, 2007 that he would be given a 60-day extension in which to submit his brief and/or additional evidence, but that no further extensions would be granted. Accordingly, the file is complete. The AAO has reviewed all submitted evidence in reaching its decision.

The record establishes that Mr. [REDACTED] served in the U.S. Army from December 3, 1945 until May 27, 1949, when he was honorably discharged from active service. Based on Mr. [REDACTED] World War II service, the AAO does not find the applicant to be subject to the legitimation requirements set forth in section 205 of the Nationality Act of 1940 (1940 Act). Instead, section 201(i) of the 1940 Act applies to the applicant's claim to citizenship.

Section 201(i) of the 1940 Act, as amended¹ stated:

- (i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941 and before the date of termination of hostilities in the present war as proclaimed

¹ Act of July 31, 1946, Pub.L. 79-571, 60 Stat. 721, added section 201(i) to the 1940 Act. Subsequently, the Act of March 16, 1956, Pub.L. 84-430, 70 Stat. 50 afforded U.S. citizenship to a child born to a U.S. citizen parent who served in the military after December 31, 1946 until December 24, 1952.

by the President or determined by a joint resolution by the Congress and 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 twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

In that Mr. ██████ military service began prior to the December 31, 1946 Presidential Proclamation ending U.S. involvement in World War II, the AAO finds the applicant to qualify for consideration under section 201(i) of the 1940 Act. The issues before the AAO are, therefore, whether the record establishes that Mr. ██████ prior to the applicant's birth, had ten years of residence in the United States, at least five of which followed his 12th birthday and, if so, whether the applicant has the U.S. residence necessary to retain the citizenship he may have acquired at birth.

The AAO notes that the district director in a March 30, 2006 request for evidence asked for proof of Mr. ██████ residence in the United States prior to the applicant's birth, indicating that documentation such as social security earnings statements, census records, school records, military records, lease agreements/contracts, or income tax returns would be accepted as proof of residence. The record contains Mr. ██████ U.S. Army and U.S. Air Force records; a 1986 newspaper announcement of funeral services for Mr. ██████ daughter, which indicates that he was living in Crowley, Louisiana at that time; photographs of Mr. ██████ and an April 29, 2006 affidavit sworn by Mr. ██████ in which he attests that he has always lived in Louisiana, except for the years he was stationed in Germany and serving in the U.S. Air Force.

The record establishes that Mr. ██████ service in the U.S. Army consisted of nine months and eight days of "continental service" and two years, eight months and 22 days of "foreign service" for a total of three years and six months. While the AAO will consider active service in the U.S. military overseas to be residence in the United States, only 16 months of Mr. Perry's overseas service took place prior to the applicant's December 16, 1947 birth. Therefore, Mr. ██████ U.S. Army records establish approximately two years and one month of physical presence in the United States prior to the applicant's birth. The documentation of Mr. ██████ service in the U.S. Air Force Reserve, which began in 1949 and the 1986 newspaper announcement are not relevant to Mr. ██████ presence in the United States prior to the applicant's 1947 birth. The photographs of Mr. ██████ are not reliably identified as to date or location. Further, Mr. ██████ assertion that he has lived in the United States his entire life is not, in the absence of any supporting evidence, sufficient to meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has not established that his father resided in the United States for ten years prior to his birth, five of which followed Mr. ██████ 12th birthday. Therefore, the appeal will be dismissed.

Although the record does not establish that the applicant automatically acquired U.S. citizenship at the time of his birth, the AAO will nevertheless consider whether, had he acquired citizenship at birth, the applicant has met the residence requirements for the retention of citizenship. As previously noted, the requirements of section 201(i) of the 1940 Act originally required that an individual who acquired citizenship through a U.S. citizen serving in the military during World War II establish that he or she had resided in the United States for a period of five years between 13 and 21 years of age. Section 301(a)(7)(b) of the Immigration and Nationality Act of 1952 (the Act) amended these requirements as follows:

Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following such coming be continuously physically present in the United States for at least five years: Provided, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

The Act of October 27, 1972, Pub.L. 92-582, 86 Stat. 1289 further amended the retention requirements of section 301, stating in pertinent part:

Any person who is a national and citizen of the United States under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless – (1) he shall come to the United States and be continuously present therein for a period of not less than two years between the ages of fourteen years and twenty-eight years In the administration of this subsection absence from the United States of less than sixty days in the aggregate during the period for which continuous physical presence in the United States is required shall not break the continuity of such physical presence.

Under the 1972 amendments, individuals who had arrived in the United States prior to their enactment could choose to comply with the retention requirements set forth in the 1952 Act rather than those just discussed.

The record establishes that the applicant arrived in the United States on September 14, 1967 at 19 years of age. The only documentation in the record that relates to the applicant's residence in the United States are the 1986 newspaper announcement for the funeral of the applicant's half-sister, which indicates that he was then living in Oklahoma, the affidavit submitted by Mr. [REDACTED] in which he states that the applicant was drafted into the U.S. military shortly after his arrival in the United States, and photographs of the applicant in uniform. However, the 1986 newspaper announcement does not relate to the applicant's residence in the United States during the relevant time period. Mr. [REDACTED]'s statement, although it is supported by photographs of the applicant in uniform, does not establish when the applicant's military service occurred or the length of that service. The photographs of the applicant in uniform are not reliably dated. Accordingly, the record does not establish that the applicant has complied with either the retention requirements of the 1952 Act or those introduced by the 1972 amendments. He has not proved that, had he acquired U.S. citizenship at birth through his U.S. citizen

father, he has met the residency requirements necessary to retain that citizenship. For this reason as well, the appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding.

ORDER: The appeal is dismissed.