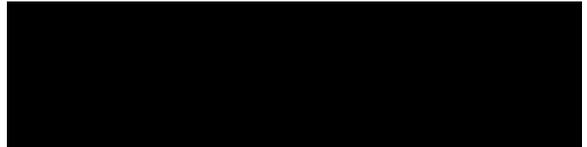


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U.S. Citizenship
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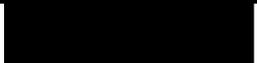
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AUG 10 2007

FILE:



Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 301(f) of the Immigration and Nationality Act; 8 U.S.C. § 1401(f).

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks a Certificate of Citizenship pursuant to section 301(f) of the Act, 8 U.S.C. § 1401(f). The applicant believes he was born on December 3, 1956, but does not know the identity of his parents or his place of birth. The applicant was raised by [REDACTED] and his wife, [REDACTED] since the age of two. [REDACTED] and his wife, both U.S. citizens, resided with the applicant in the Chicago area. [REDACTED] passed away in 1976.

The district director denied the applicant's Form N-600 finding that section 301(f) of the Act, 8 U.S.C. § 1401(f), was inapplicable to the applicant's case. On appeal, the applicant, through counsel, claims that the district director erred in denying the application. The applicant maintains that he was born on December 3, 1956, but explains that the identity of his parents and the circumstances of his birth are unknown. He claims that he was raised by [REDACTED] and [REDACTED] after [REDACTED] brought him home without explanation at the age of 2.

Section 201(f) of the Nationality Act of 1940 first codified the presumption of U.S. citizenship for children who are found in the United States at a young age. The Nationality Act of 1940 was in effect until December 23, 1952, when section 301(f) of the Act, 8 U.S.C. § 1401(f), became effective.

Under section 301(f) of the Act, 8 U.S.C. § 1401(f),

A person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States [is a citizen of the United States]

The Immigration and Naturalization Service's Interpretation, at 301(a)(7), explains that:

[A] person whose parentage is . . . unknown, if found in the United States . . . while under 5 years of age, is conclusively presumed to be a native-born citizen, unless such person's birth outside the United States is established before he or she attains majority.

Volume 7 of the U.S. Department of State, Foreign Affairs Manual (7 FAM) section 1118(a) states that:

Under Section 301(f) . . . a child of unknown parents is conclusively presumed to be a U.S. citizen if found in the United States when under 5 years of age, unless foreign birth is established before the child reaches age 21.

8 C.F.R. 341.2(c) provides 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 record contains the following evidence pertaining to the applicant's birth, identity, and presence in the United States:

1. An notarized letter from [REDACTED] stating that "in 1959, while living in Chicago, Illinois, my husband, [REDACTED] came home one evening with a small boy dressed in dirty, ragged clothes. He told me that the boy lived with his Grandmother but she was ill and he would be spending the weekends with us. I was told that his name was [REDACTED] and his birthday was December 3, 1956." She further explains that when she asked her husband for an explanation, she was told "don't worry about it, I'll take care of it." According to the letter, after about six months, the boy began residing permanently with the [REDACTED]. The letter further states that "in 1976, [REDACTED] died ... without telling me of [REDACTED] true identification."
2. Letters from [REDACTED] and [REDACTED], the applicant's "cousins," confirming that the applicant was raised by the [REDACTED] from the age of two or three.
3. Photographs of the applicant with the [REDACTED] and their extended family.
4. A copy of the applicant's California Driver License and Social Security Card.
5. Copies of school records, from Elementary School through College, some indicating the applicant was born in Canada and later records indicating he was born in Chicago.
6. A Baptismal Certificate, dated January 13, 1964, indicating that the applicant is the son of [REDACTED] and [REDACTED] and was born in Chicago.
7. Letters evidencing the applicant's efforts to obtain birth and census records.

The record contains no evidence to establish the basis on which the applicant's date of birth and parental information was recorded on his baptismal certificate or his school and medical records.

The AAO finds that the evidence establishes the applicant was in the U.S. while under the age of five, and throughout his childhood. The AAO finds, however, that the applicant has failed to establish by a preponderance of the evidence, the circumstances of his birth or his discovery and presence in the United States.

The AAO notes that the evidence relating to the discovery of the applicant and his presence in the United States consists mainly of the statement made by [REDACTED] his "mother." The record does not contain any evidence or explanation regarding the circumstances under which the applicant was "found," except [REDACTED] statement that the applicant was brought to her home by her husband in dirty, ragged clothes. The AAO notes further that the record contains materially different notations in the applicant's school records regarding his birthplace, the earliest of which suggest that the applicant was born in Canada. There is no evidence or explanation in the record as to the reason why early school records indicate Canada as the applicant's birthplace, or as to what evidence was used by the applicant to obtain a social security card or driver license. There is also no explanation in the record why the applicant did not learn of the circumstances of his discovery from [REDACTED], who passed away in 1976 when the applicant was already 20 years old.

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. For the presumption of citizenship in section 301(f) of the Act to apply, the applicant must establish that he was a person of unknown parentage, found in the United States prior to the age of 5, and whose foreign birth was not established prior to the age of 21. The AAO finds that the applicant cannot establish, by a preponderance of the evidence, that his birth abroad was not established prior to the age of 21. The AAO further finds that the applicant has failed to meet his burden to establish that he is "of unknown parentage." Thus, the AAO concludes that the applicant has not met the burden of establishing that he qualifies for citizenship under section 301(f) of the Act, 8 U.S.C. § 1401(f). The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.