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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: BOSTON (HARTFORD, CT) Date: **AUG 29 2007**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 19, 1986 in Yemen. The applicant's father, [REDACTED] was born on October 1, 1953. He became a naturalized U.S. citizen on February 16, 1979. The applicant's mother, [REDACTED], is a lawful permanent resident of the United States. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to establish eligibility under sections 301(g) or 320 of the Act, 8 U.S.C. §§ 1401(g) and 1431. The application was accordingly denied.

On appeal, the applicant, through counsel, contends that his application should be granted because he holds a valid U.S. passport. *See* Applicant's Counsel's Letter-Brief at 2. The applicant maintains that he has established that his father had the required physical presence in the United States and is therefore entitled to a Certificate of Citizenship.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born on August 19, 1986. Section 301(g) of the former Act, 8 U.S.C. § 1401(g), as in effect prior to the amendments enacted by the Act of November 16, 1986, Pub. L. 99-653, 100 Stat. 3655, therefore applies to this case.

Section 301(g) of the former Act, 8 U.S.C. § 1401(g), provided that

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 [shall be a citizen of the United States]

In order to acquire U.S. citizenship under this provision, the applicant must establish that his father was present in the United States for a period of ten years prior to 1986, at least five of which were after he attained the age of 14 (in 1967).

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's father's naturalization certificate, the applicant's father's merchant marine records for the years 1978 to 1985, a copy of the applicant's father's social security earnings report for the years 1970-2000, a New York Technical College identification card dated Spring 1985, and affidavits executed by the applicant and his father.

The AAO finds that the affidavits and documentary evidence sufficiently establish that the applicant's father was physically present in the United States for the required period.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.