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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 26 2007

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 Director, California Service Center, and 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 September 30, 1956. The applicant's father, [REDACTED] was born in Georgia on April 4, 1932, and he was a United States citizen. The applicant does not assert, and the record does not support, that his mother was a United States citizen. The applicant's parents were married in Canada on May 31, 1958. The applicant 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), based on the claim that he acquired U.S. citizenship at birth through his father.

The director found that, based on the evidence in the record, the applicant failed to establish that his father resided in the United States for ten years prior to the applicant's birth, at least five years of which occurred after his father reached fourteen years of age, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant's father has resided in the United States for his entire life, with the exception of a two to three year period during which he worked in Canada. *Statement from Counsel on Form I-290B*, dated August 15, 2006. The applicant submits evidence of his father's presence in the United States.

The record contains a statement from counsel on Form I-290B; a copy of the applicant's father's application for a social security card, dated June 16, 1948; a copy of the applicant's father's [REDACTED] driver's license, noting an exam date of December 1, 1992; copies of the applicant's father's tax records for 1996; copies of the applicant's father's birth and death certificates; copies of the applicant's and his parents' marriage certificates; a copy of the applicant's mother's permanent resident card; a copy of a record of the applicant's father's service in the U.S. Navy, and; a copy of the applicant's birth certificate. The entire record was considered in rendering this decision.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

"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 this case was born in Canada in 1956. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states, in pertinent part 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: *Provided*, That any periods of honorable

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 applicant has not provided sufficient evidence to establish that his father was, prior to the applicant's birth, physically present in the United States for a period or periods totaling ten years, at least five of which were after attaining the age of fourteen years. *See* section 301(a)(7) of the former Act.

The applicant submitted a record of his father's service in the U.S. Navy from May 11, 1951 to April 22, 1955. This period of three years, eleven months, and twelve days qualifies as physical presence in the United States, pursuant to section 301(a)(7) of the former Act.¹

The only other evidence to reflect the applicant's father's presence in the United States prior to the applicant's birth consists of the applicant's father's birth certificate and application for a social security number. While these two documents reflect that the applicant's father was in the United States on April 4, 1932 and June 16, 1948, they do not serve as sufficient documentation of his continued presence between those dates, or after.

Counsel asserts that the applicant's father has resided in the United States for his entire life, with the exception of a two to three year period during which he worked in Canada. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The remaining documents provided by the applicant, including a copy of his father's Georgia driver's license, tax records, and death certificate, show the applicant's father's presence in the United States after the applicant's birth date. Accordingly, they are not probative of whether the applicant's father was in the United States prior to the applicant's birth. Based on the foregoing, the applicant has not shown that his father was, prior to the applicant's birth, physically present in the United States for a period or periods totaling ten years, at least five of which were after attaining the age of fourteen years. *See* section 301(a)(7) of the former Act.

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. The AAO finds that the applicant failed to establish by a preponderance of the evidence that satisfies the requirements of section 307(a)(7) of the former Act. Accordingly, the appeal will be dismissed.²

¹ The director stated that the applicant's father's service in the U.S. military began on March 11, 1952, and his total length of service was three years, seven months, and 17 days. However, three years, seven months, and 17 days is the length of time the applicant's father served at sea or in foreign territory. *Record of Applicant's Father's Military Service*. As noted above, he began his service on May 11, 1951, and continued for a period of three years, eleven months, and twelve days.

² It is noted that the present application fails for a lack of evidence, and the record does not affirmatively indicate that the applicant is ineligible for a certificate of citizenship. The dismissal of this appeal is without prejudice to the applicant, and he may file a new Form N-600 with additional evidence if he feels he may meet the requirements of section 307(a)(7) of the former Act.

ORDER: The appeal is dismissed.