



U.S. Citizenship
and Immigration
Services

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ER



FILE:

Office: ANCHORAGE, ALASKA

Date: JUN 19 2007

IN RE:

Applicant

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(i) of the Nationality Act of 1940, 8 U.S.C. § 601(i).

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.

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, Anchorage, Alaska. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born in Mexico on March 27, 1947. The applicant's father was born a U.S. citizen in Vanhorn, Texas, on September 11, 1917. The applicant's mother is not a U.S. citizen. The record indicates that the applicant's parents were married at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to section 201(i) of the Nationality Act of 1940; 8 U.S.C. § 601(i), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined the applicant had failed to establish that prior to his birth, his father met the U.S. residence requirements necessary for transmission of U.S. citizenship to the applicant. The application was denied accordingly.

On appeal, the applicant submits copies of his siblings' certificates of citizenship. The applicant indicates that his siblings acquired U.S. citizenship through his father, and that he is also entitled to acquire U.S. 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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born on August 30, 1945. The citizenship provisions contained in the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940) (The Nationality Act) are therefore applicable to his acquisition of U.S. citizenship claim.

The AAO notes that the sibling certificates of citizenship submitted by the applicant reflect that his siblings were born on August 27, 1935, September 18, 1937 and July 25, 1940. The applicant's siblings' acquisition of citizenship claims would therefore have been adjudicated under the citizenship provisions in effect prior to the passage of the Nationality Act, which required only that the U.S. citizen parent resided in the United States at some point before the birth of the child.¹

The citizenship provisions contained in the Nationality Act contain specific U.S. residence requirements for the U.S. citizen parent. Section 201(g) of the Nationality Act provided in pertinent part that U.S. citizenship may be transmitted to:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten

¹ Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, applied to children born abroad to a U.S. citizen parent, between May 24, 1934 and January 13, 1941, and stated in pertinent part that:

All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years

Section 201(i) of the Nationality Act stated in pertinent part that U.S. citizenship may be transmitted to:

A person born outside the United States and its outlying possession 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 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

The record reflects that the applicant's father served honorably in the U.S. armed forces prior to the termination of World War II. Section 201(i) of the Nationality Act provisions therefore apply to the present matter. Accordingly, the applicant must establish that his father resided in the United States for ten years between September 11, 1917 and March 27, 1945, at least five years of which occurred after September 11, 1929 when his father turned twelve.

The record contains the following evidence relating to the applicant's father's [REDACTED] U.S. residence during the requisite time period:

A birth certificate reflecting that [REDACTED] was born in Vanhorn, Texas on September 11, 1917, and that his parents resided in Vanhorn, Texas at the time of [REDACTED] s birth.

U.S. military documentation reflecting that [REDACTED] served honorably in the U.S. Army between January 5, 1945 and December 12, 1945.

A U.S. Social Security Administration earnings statement reflecting that [REDACTED] earned the following amounts for companies in the United States:

January – March 1942 - \$95.51
October – December 1942 - \$3.60
April – June 1943 - \$12.80
April – June 1944 - \$125.35
July – September 1944 - \$270.27

The AAO notes that the earnings contained in the Social Security Administration earnings statement are minimal. The earnings statement additionally fails to establish or indicate where [REDACTED] resided during the time that he worked in the United States, and it fails to demonstrate that [REDACTED] worked for ten years in the United States prior to the applicant's birth. Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for ten years prior to his birth, as required by section 201(i) of the Nationality Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has failed to establish that his father resided in the United States for ten years prior to his birth, at least five years of which were after he turned twelve, as required by section 201(i) of the Nationality Act. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.