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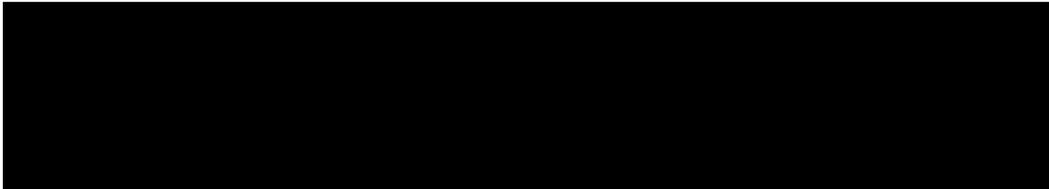
U.S. Department of Homeland Security
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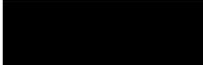


U.S. Citizenship
and Immigration
Services

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FILE:  Office: MIAMI, FLORIDA Date: **FEB 13 2008**

IN RE: Applicant: 

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

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, Miami, Florida 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 July 11, 1979 in Thailand. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1976, and divorced in 1983. The applicant's father is a U.S. citizen.

The district director concluded that the applicant had failed to establish that her father had the requisite period of physical presence in the United States to be eligible to derive citizenship under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). The application was accordingly denied.

On appeal, the applicant maintains that her father was employed by the U.S. government from 1962 to 1974 in Laos. In support of that claim, the applicant submits an affidavit executed by her father indicating that he had been employed by the Federal Highway Administration in Laos. The applicant also submits an affidavit executed by [REDACTED] stating that the applicant's father had told him that he worked for the U.S. government in Laos.

On November 21, 2007, the AAO issued a request for further evidence of the applicant's father's government employment. The applicant, through counsel, responded to the request on February 5, 2008 by submitting a copy of a certificate issued to the applicant's father by the U.S. Department of State, Agency for International Development.

The AAO notes that "[t]he 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 was born on July 11, 1979. Section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect in 1979, is therefore applicable to her citizenship claim.

Section 301(g) of the Act, as in effect in 1979, stated, in relevant part, that the following shall be nationals and citizens of the United States at birth:

[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, or periods of employment with the United States Government . . . by such citizen parent may be included in order to satisfy the physical presence requirements of this paragraph.

The applicant is thus required to establish that her father was physically present in the United States for 10 years prior to July 11, 1979 (the applicant's date of birth), five of which were after July 21, 1942 (the applicant's father's 14th birthday). Any periods of overseas employment with the U.S. government may be included in computing the applicant's father's physical presence.

The relevant evidence in the record includes the applicant's father's affidavit as well as the certificate issued by the U.S. Department of State, Agency for International Development. The AAO notes that the certificate was issued to the applicant's father in 1973 in recognition of 10 years of service with the U.S. government. The certificate is signed by the Director of the USAID Mission to Laos.

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 AAO finds that the evidence currently in the record establishes that the applicant's father was physically present in the United States as required by section 301(g) of the Act, 8 U.S.C. § 1401(g). The applicant has therefore met her burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.