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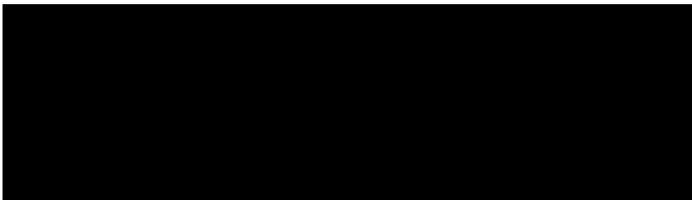
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

E2



FILE:

Office: NEW YORK, NY

Date:

**FEB 13 2008**

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

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, New York, New York and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 21, 2004 in Canada. The applicant's father, [REDACTED] became a U.S. citizen upon naturalization on September 23, 1996. The applicant's mother, [REDACTED], is not a U.S. citizen. The applicant's parents were married on July 7, 2002 in Sri Lanka. The applicant was admitted to the United States as a non-immigrant, she resides with her parents in New York. She presently seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her father.

The director denied the application finding that the applicant had failed to establish that she was the biological child of [REDACTED]. The director further found that the applicant had failed to establish that her father was physically present in the United States for 5 years prior to her date of birth. The director concluded that the applicant was ineligible for citizenship under either section 301 or 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 or 1431.

On appeal, the applicant's father maintains that he is the applicant's biological parent and offers to undergo DNA testing. He also submits a copy of two W-2 Forms for the year 2000.

On December 20, 2007, the AAO issued a request to the applicant seeking evidence to establish that [REDACTED] is the applicant's father. The AAO also requested evidence that [REDACTED] was physically present in the United States for five years prior to the applicant's birth. On January 28, 2008, the AAO received the applicant's response which included DNA results establishing the biological relationship between the applicant and [REDACTED] her father. The applicant did not submit any additional evidence of her father's physical presence in the United States.

"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 in 2004.

Section 301 of the Act, 8 U.S.C. § 1401, provides, in relevant part, that the following shall be nationals and citizens of the United States at birth:

(g) 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 five years, at least two of which were after attaining the age of fourteen years . . . .

The AAO notes that section 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA). These amendments took effect on February 27, 2001 and apply prospectively. The applicant was born in 2004; the CCA is therefore applicable to her case. Nevertheless, the applicant did not acquire U.S.

citizenship under section 320 of the Act (because she has not been admitted as a lawful permanent resident) or under section 322 of the Act (because, among other things, she is residing in the United States).

The AAO finds that the applicant has established that [REDACTED] is the applicant's biological father. However, the AAO also requested evidence to establish that her father was physically present in the United States for five years prior to 2004, two of which were while over the age of 14. The applicant failed to respond to this request.

The record contains W-2 forms and tax transcripts for the years 2000-2005. The applicant's father's naturalization certificate, dated September 23<sup>rd</sup>, 1996, suggests that he was in the United States in 1996. The AAO notes that an applicant for naturalization is generally required to be over 18 years old, and to reside in the United States for a period of one, three, or five years prior to filing the application. The evidence in the record is insufficient to establish that the applicant's father was physically present in the United States for the period of time required by section 301(g) of the Act, 8 U.S.C. § 1401(g).

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 does not establish 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 therefore has not met her burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.