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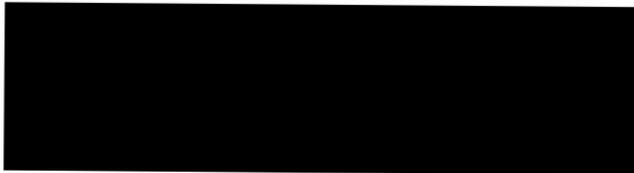
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FILE: [REDACTED] Office: ST. LOUIS, MO Date: JAN 04 2008

IN RE: Applicant: [REDACTED]

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

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 Field Office Director, St. Louis, Missouri, 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 28, 1958 in Germany. The applicant's parents are [REDACTED]. The applicant's parents were married in Germany on June 11, 1957. The applicant's father was a U.S. citizen, born in Missouri on December 29, 1933. The applicant's father served honorably in the U.S. Armed Forces from 1954 until 1958. The applicant's mother became a U.S. citizen upon her naturalization on September 9, 1977. The applicant seeks a certificate of citizenship claiming that he acquired citizenship at birth through his father pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director denied the applicant's citizenship claim, finding that he had failed to establish that his father was physically present for five years after attaining the age of 14. The application was accordingly denied.

On appeal, the applicant claims that he is entitled to a certificate of citizenship based on his Report of Birth Abroad. Alternatively, the applicant claims his father had the required physical presence and submits additional documentation in support of his claim.

"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 was born on August 28, 1958. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.¹

Section 301(a)(7) of the former Act stated 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 by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The applicant must thus establish that his father was physically present in the United States for at least 10 years prior to the applicant's birth on August 28, 1958, five of which after his father's 14th birthday on December 29, 1947.

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

The AAO notes that the record includes the applicant's Report of Birth Abroad issued on November 21, 1958 by the U.S. Consulate in Frankfurt. The Report provides, *inter alia*, a contemporaneous account of the applicant's father's residences. The AAO notes that the applicant's father reported at the time that he had resided in the United States since birth, and was abroad due to his service in the U.S. Armed Forces. The AAO further notes the additional documentation provided by the applicant on appeal, including his father's junior and senior high school records. The additional documentation submitted by the applicant establishes that his father was present in the United States, at a minimum, from 1947 until 1953.

The AAO finds that the applicant has established that his father was physically present in the United States for 10 years, five of which while after December 29, 1947 (his 14th birthday). Specifically, the AAO finds that the applicant has established, by a preponderance of the evidence, that his father was physically present in the United States at birth and from 1947 until his enlistment in the U.S. Armed Forces in 1954. The AAO notes that the Act specifically provides that periods of honorable service in the U.S. Armed Forces may be included in calculating physical presence. Thus, the applicant's father was also physically present in the United States during the period between 1954 and 1958, when he was serving abroad in the U.S. Army.

Pursuant to 8 C.F.R. § 341.2(c), 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 has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.