

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

E2



FILE: [Redacted] Office: MEMPHIS, TN Date: JAN 07 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Memphis, Tennessee, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 18, 1970 in Trinidad. The applicant's father is [REDACTED], a native-born U.S. citizen born on August 12, 1950. The applicant's mother, [REDACTED] was born in Trinidad and is a lawful permanent resident of the United States. The applicant's parents were married in Trinidad on January 17, 1975.¹ The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).

The field office 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 of the Act, 8 U.S.C. § 1401. The application was accordingly denied on September 28, 2007.

On appeal, the applicant states that her father was physically present in the United States after 1968. See Form I-290B, Notice of Appeal. The applicant claims that her father traveled out of the country during his breaks in school. *Id.* In support of her claim, the applicant submits a copy of a diploma from Knoxville College dated in 1972.

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 April 18, 1970. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to her citizenship claim.²

Section 301(a)(7) of the former Act states 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.

¹ The AAO notes that the applicant was born out of wedlock, but was legitimated in 1975. She therefore complied with the requirement in section 309 of the Act, 8 U.S.C. § 1409.

² The AAO notes that 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 field office director refers to section 301(g) of the Act, 8 U.S.C. § 1401(g), in her decision.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to April 18, 1970, five of which after August 12, 1964 (when her father turned 14 years old).

The relevant evidence in the record indicates that the applicant's father was born in Illinois. He attended elementary school in Illinois, as evidenced by the diploma issued by Cook County in 1964. The social security statement submitted by the applicant shows, in relevant part, that the applicant's father earned an income during 1967 and 1968, and no income in 1969 and 1970. The record also contains a copy of the applicant's father's college diploma, issued by Knoxville College in 1972.

Based upon a careful review of the record, the AAO finds that the applicant has failed to establish that her father was physically present in the United States for the required 10 years prior to 1970, five of which were after 1964. The AAO finds that the applicant has established that her father was physically present in the United States until 1968. The AAO finds that the applicant has failed to establish that it is "more likely than not" that her father was present in the United States in 1969 or 1970. The AAO finds that the applicant has also not established that her father was in the United States for all or a significant part of 1968. The record does not contain any relevant, probative evidence to support her claim that he was in school in the United States and only traveled abroad during school breaks. Thus, the applicant has not established that her father was present in the United States for five years after turning 14 years old in 1964.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 applicant has not met her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.