

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

E 2



FILE: [Redacted] Office: MIAMI, FL Date: JAN 07 2006

IN RE: Applicant: [Redacted]

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

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.

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 January 17, 1982 in Canada. The applicant's father, [REDACTED] was born on October 28, 1943. He became a U.S. citizen upon his naturalization on October 5, 1972. The applicant's mother, [REDACTED] is citizen of Canada. The applicant's parents were married in Canada on March 18, 1972. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his father had been physically present in the United States as required by section 301(g) of the Act, 8 U.S.C. § 1401(g). The application was accordingly denied.

On appeal, the applicant maintains that he has established that his father had the required physical presence in the United States. In support of his appeal, the applicant submits, among other things, his father's high school and college transcript. The applicant also submits his father's Form DD-214 and draft card.

"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 in this case was born on January 17, 1982. Section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect prior to the amendments enacted by the Act of November 16, 1986, Pub. L. 99-653, 100 Stat. 3655, is therefore applicable in this case.

Section 301(g) of the Act then provided that the following shall be a national and citizen 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.

In order to acquire U.S. citizenship under this provision, the applicant must establish that his father was present in the United States for a period of ten years prior to 1982, at least five of which were after he attained the age of 14 (in 1957).

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's father's naturalization certificate, the applicant's father's military records establishing his service in the U.S. Army from March 1969 to October 1971, the applicant's father's high school and college transcripts (establishing his presence in the United States during 1959-1961, 1963-1964, and 1972-1973).

The AAO finds that the documentary evidence in the record, including the evidence submitted on appeal, sufficiently establishes that the applicant's father was physically present in the United States for the required period.

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 applicant in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.