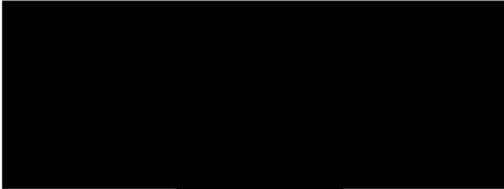


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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: JUL 17 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:

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 now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Italy on September 25, 2003. The applicant's parents, as reflected on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's father is a native-born U.S. citizen, born in Glen Cove, New York on July 14, 1970. The applicant's parents were married in 1998. The applicant's mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship under section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that she derived citizenship from her father.

The district director concluded that the applicant failed to establish that her father had been physically present in the United States for the period required by section 301 of the Act. Additionally, the director noted that the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because she was not admitted for lawful permanent residency. Finally, the director found that the applicant also did not qualify for citizenship under section 322 of the Act, 8 U.S.C. § 1433, because she was not residing abroad. The application was denied accordingly.

On appeal, the applicant's father states that he is "not accepting [the] decision." See Statement from Applicant's Father on Form I-290B, Notice of Appeal to the AAO. The applicant's father suggests that additional evidence is being submitted with the appeal.¹

Section 301(g) of the Act, 8 U.S.C. § 1401(g), provides 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 five years, at least two 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 her father was present in the United States for a period of five years prior to 2003, at least two of which were after he attained the age of 14 (in 1984).

The applicant's father claims that he resided in the United States from birth until age 6, and then again beginning in 1988 until 1990. The record contains, in relevant part, copies of certain pages of applicant's father's U.S. passports, a copy of his driver's license and a New York Department of Motor Vehicles (DMV) record, and a letter from the Social Security Administration verifying that he obtained his social security card in 1989. The AAO finds that the applicant's father's claim is corroborated by the evidence in the record. The AAO notes, in particular, the date stamps in the applicant's father's passport and the DMV record (evidencing

¹ The AAO notes that additional evidence was not submitted with the appeal.

a traffic citation and entries in 1989 and 1990). Therefore, the applicant has established, by a preponderance of the evidence, that her father was physically present for five years prior to the applicant's birth, two of which while over the age of 14. The AAO finds that the applicant acquired U.S. citizenship at birth.²

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 this case has met her burden. The appeal will therefore be sustained.

ORDER: The appeal is sustained.³

² Having found that the applicant acquired citizenship at birth pursuant to section 301 of the Act, the AAO need not address the applicant's ineligibility under sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, as amended by the Child Citizenship Act of 2000.

³ The AAO notes that the applicant's father attempted to appeal the denial of the applicant's brother's application, and that the appeal was properly rejected by the director for failure to pay the required fee. In view of the AAO's finding in this case, reopening of the applicant's brother's case appears to be warranted.