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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

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FILE:



Office: NEW YORK, NY

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JUN 13 2008

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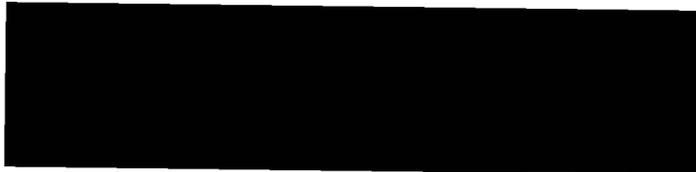
Applicant:



APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form N-600 application will be approved.

The record reflects that the applicant was born in Yemen on July 7, 1987. The applicant's father was born in Yemen on January 15, 1942, and he became a naturalized U.S. citizen on August 4, 1982, prior to the applicant's birth. The applicant's mother is not a U.S. citizen. The applicant's parents married in Yemen on May 14, 1964. The applicant was admitted into the United States as a lawful permanent resident on January 24, 2006, when he was eighteen years old. He presently 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 determined that the applicant did not qualify for U.S. citizenship under section 301(g) of the Act because he failed to establish that his father ( ) was physically present in the United States for five years prior to the applicant's birth, at least two of which were after [ ] turned fourteen years old. The district director determined further that the applicant did not qualify for U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, because the applicant was not under the age of eighteen when he became a lawful permanent resident. The Form N-600 application was denied accordingly.

On appeal the applicant asserts, through counsel, that the evidence contained in the record establishes his father was physically present in the United States for at least five years prior to the applicant's birth. The applicant additionally asserts that he resides in the legal and physical custody of his U.S. citizen father pursuant to a lawful admission for permanent residence. The applicant concludes that his Form N-600 application should therefore be granted.

Section 320 of the Act provides in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
  - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
  - (2) The child is under the age of eighteen years.
  - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

In the present matter, the applicant was not under the age of eighteen on January 24, 2006, when he was admitted into the U.S. as lawful permanent resident. The applicant therefore does not meet the requirements for U.S. citizenship under section 320 of the Act.

"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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted.) The applicant was born in Yemen on July 7, 1987. Section 301(g) of the Act therefore applies to his citizenship at birth claim.

Section 301(g) of the Act provides, in pertinent part, that the following shall be 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 five years, at least two of which were after attaining the age of fourteen years.

The record contains the following evidence relating to [REDACTED]'s physical presence in the United States between his birth on January 15, 1942, and the applicant's birth on July 7, 1987:

A Certificate of Naturalization reflecting that [REDACTED] became a naturalized U.S. citizen in New York on August 4, 1982, and reflecting a New York address.

[REDACTED]'s 1985, 1986, and 1987 federal income tax returns reflecting that [REDACTED] had a New York address.

A sworn Affidavit of Residence and Paternity signed by [REDACTED] on June 17, 2004, stating in pertinent part that he was physically present in the United States from October 1970 – October 1975; March 1976 – April 1977; July 1978 – August 1982; February 1983 – June 1984; November 1984 – April 1986; October 1986 – March 1988. [REDACTED] refers to his passport as corroborative evidence of his stated U.S. physical presence. The passport is not in the record.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989.)

[REDACTED]'s Certificate of Naturalization reflects that he became a naturalized citizen, and resided in New York, on August 4, 1982. In order to become a naturalized U.S. citizen under section 316(a) of the Act, 8 U.S.C. § 1427(a), a person must reside continuously in the United States as a lawful permanent resident for at least five years prior to the filing of the application for naturalization. *See also*, 8 C.F.R. § 316.2(a)(3) (stating that eligibility for naturalization requires that the applicant reside continuously within the United States for at least five years after having been lawfully admitted for permanent residence.) The AAO finds that the Certificate of Naturalization evidence combined with the federal income tax and affidavit evidence contained in the record establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States for five or more years prior to the applicant's birth, at least two years of which occurred after [REDACTED] turned fourteen, on January 14, 1956. The citizenship requirements contained in section 301(g) of the Act have therefore been met.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has met his burden of proof in the present matter. The appeal will therefore be sustained and the Form N-600 application will be approved.

**ORDER:** The appeal is sustained. The application is approved.