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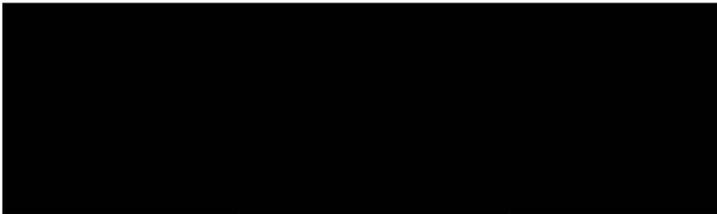
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [Redacted] Office: NEW YORK, NY Date: **MAR 25 2008**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 301 of the Immigration and Nationality Act (the 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 cursive script, 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 the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on February 13, 2008. The matter will be reopened *sua sponte* to consider the evidence submitted by the applicant. The AAO's February 13, 2008 decision will be withdrawn, and the appeal will be sustained.

The record reflects that the applicant was born on December 21, 2004 in Canada. The applicant's father, [REDACTED] became a U.S. citizen upon naturalization on September 23, 1996. The applicant's mother, [REDACTED], is not a U.S. citizen. The applicant's parents were married on July 7, 2002 in Sri Lanka. The applicant was admitted to the United States as a non-immigrant, she resides with her parents in New York. She presently seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her father.

The director denied the application finding that the applicant had failed to establish that she was the biological child of [REDACTED]. The director further found that the applicant had failed to establish that her father was physically present in the United States for 5 years prior to her date of birth. The director concluded that the applicant was ineligible for citizenship under either section 301 or 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 or 1431.

On appeal, the applicant's father maintained that he is the applicant's biological parent and offered to undergo DNA testing. He also submitted a copy of two W-2 Forms for the year 2000.

On December 20, 2007, the AAO issued a request to the applicant seeking evidence to establish that [REDACTED] is the applicant's father. The AAO also requested evidence that [REDACTED] was physically present in the United States for five years prior to the applicant's birth. On January 28, 2008, the AAO received DNA results establishing the biological relationship between the applicant and Mr. [REDACTED] her father. The AAO did not receive at that time any evidence of her father's physical presence in the United States. The AAO dismissed the appeal for failure to provide the requested evidence. The AAO has recently learned that the DNA results were forwarded directly by the laboratory, and not the applicant. On February 17, 2008, the applicant submitted additional evidence of physical presence, which will be considered at this time.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 2004. The applicable law in this case is section 301 of the Act, 8 U.S.C. § 1401, which provides, in relevant part, that the following shall be nationals and citizens of the United States at birth:

(g) 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 AAO notes that section 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA). These amendments took effect on February 27, 2001 and apply prospectively. The applicant was born in 2004; the CCA is therefore applicable to her case. Nevertheless, the applicant did not acquire U.S. citizenship under section 320 of the Act (because she has not been admitted as a lawful permanent resident) or under section 322 of the Act (because, among other things, she is residing in the United States).

The AAO finds that the applicant has established that [REDACTED] is the applicant's biological father. In addition, the AAO finds that the applicant has established that her father was physically present in the United States for five years prior to 2004, two of which were while over the age of 14.

The record contains W-2 forms for the years 1989-2004, and tax transcripts for the years 2000-2005. The record also contains a social security earning statement listing income for years 1989-2006. The applicant's father's naturalization certificate, dated September 23<sup>rd</sup>, 1996, shows that he was in the United States in 1996. The applicant's father's Form N-400, Application for Naturalization, indicates that he resided in the United States for more than five years prior to filing the application.

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 met her burden. The applicant has established that her father was physically present in the United States as required by section 301(g) of the Act, 8 U.S.C. § 1401(g). The appeal will therefore be sustained.

**ORDER:** The AAO's February 13, 2008 decision is withdrawn. The appeal is sustained.