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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: NOV 26 2008

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:

[REDACTED]

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 "John F. Grissom".

John F. Grissom, Acting 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 on [REDACTED] in Ireland. The applicant's father, [REDACTED] was born on [REDACTED] in Ireland and became a U.S. citizen upon his naturalization on May 9, 1960. The applicant's parents were married on January 27, 1971 in Ireland. 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 she acquired U.S. citizenship at birth through her father.

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to establish her father's required physical presence in the United States. The application was accordingly denied. On appeal, the applicant, through counsel, contends that she has established that her father had the required physical presence in the United States and is therefore entitled to a Certificate of Citizenship.

"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 [REDACTED] 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 to her case.

Section 301(g) of the Act, as in effect in 1980, provided, in relevant part, that

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 [shall be a citizen of the United States]

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 ten years prior to 1980, at least five of which were after he attained the age of 14 (in 1939).

The record in this case contains, in relevant part, the applicant's birth certificate, a statement from the applicant's uncle, a statement from the applicant's father's co-worker, the applicant's parents' marriage certificate, the applicant's father's naturalization certificate, the applicant's father's social security earnings statement indicating employment income for the years 1954 to 1962 (not including 1961), an affidavit executed by the applicant's father, a luggage tag dated in 1954, a copy of the applicant's father's passport, and copies of the applicant's grandfather's military records. On appeal, the applicant submitted eight additional affidavits executed by her father's friends, co-workers and neighbors.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected

arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The evidence submitted consistently indicates that the applicant's father resided in the United States from 1954 until 1961, and from 1962 to 1964. The affidavits are detailed and, to the extent possible, are corroborated by documentary evidence. The AAO finds that the affidavits and documentary evidence submitted sufficiently establish that the applicant's father was physically present in the United States for the ten-year period required by statute.

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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.