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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: OCT 21 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 of the Revised Statues of the United States, 1878, as amended

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, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 16, 1931 in The Philippines. The applicant's father, [REDACTED], was born on June 16, 1906 in The Philippines and acquired U.S. citizenship at birth. The applicant's mother, [REDACTED], was, at the time of his birth, a citizen of The Philippines and a U.S. national. The record does not indicate that she has subsequently become a U.S. citizen. The applicant's parents married in or around 1929. The applicant states he is seeking a certificate of citizenship based on his out-of-wedlock birth to a U.S. citizen father under sections 201(e) and 204 of the Nationality Act of 1940 (1940 Act).

The AAO notes that the applicant has previously sought a certificate of citizenship based on his birth to Mr. [REDACTED]. On March 12, 1990, the applicant filed the Form N-600, Application for Certificate of Citizenship, as the legitimate son of [REDACTED]. Although the applicant was initially issued a certificate of citizenship, the district director cancelled that certificate on November 22, 1994 under section 342 of the Immigration and Nationality Act. The applicant appealed the district director's decision to the AAO. On June 4, 1996, the AAO dismissed the applicant's appeal.

The district director denied the instant Form N-600 based on her determination that the applicant did not qualify for consideration under the 1940 Act as he had been born in 1931 and was, therefore, subject to the provisions of the Revised Statutes of the United States, 1878 (Revised Statutes). She further found that the record did not establish that the applicant, who had previously claimed his parents were married prior to his birth, had been born out-of-wedlock. Accordingly, the district director denied the Form N-600. *Decision of the District Director*, dated July 6, 2006.

On appeal, the applicant states that he has presented evidence that establishes he was born out-of-wedlock and is, therefore, entitled to consideration under the 1940 Act. *Applicant's Brief*, dated July 8, 2006. He contends that until the 1940 Act took effect in 1941, no U.S. law addressed how children born out of wedlock to U.S. citizens abroad could acquire U.S. citizenship. He further asserts that section 204 of the 1940 Act provides for retroactive application of section 201(e) in the case of children who, like him, have been legitimated by their parents' marriage. *Applicant's statement on appeal*, July 18, 2006.

The AAO turns first to the applicant's claim that, as a legitimated child, he is eligible for U.S. citizenship under the retroactive application of section 201(e) of the 1940 Act. It observes that section 204 of the 1940 Act does not address the retroactive application of section 201(e), but, instead, defines who may be classified as a U.S. national. It is section 205 of the 1940 Act that allows for the acquisition of U.S. citizenship by certain individuals born out-of-wedlock prior to the Act's January 13, 1941 effective date. This retroactive benefit, however, is limited to individuals who were born out-of-wedlock to U.S. citizen mothers and who were not legitimated during their minority. There is no retroactive application of the 1940 Act to individuals born out-of-wedlock to U.S. citizen fathers. Moreover, the AAO finds that the applicant has not demonstrated he was born out-of-wedlock to a U.S. citizen father.

In support of the applicant's contention that he was born out-of-wedlock, the record offers the following

evidence:

- A copy of a marriage contract for [REDACTED] and [REDACTED] dated October 22, 1958, documenting their religious marriage at St. Sebastian Cathedral in The Philippines and identifying them as being “single.”
- A Certificate of Baptism, dated July 17, 2002, indicating that the applicant was baptized as [REDACTED] on May 16, 1931 in the Parish of St. John Nepomuceneo, Diocese of Bacolod. The certificate lists [REDACTED] as the applicant’s parent and contains the following note: “Illegitimate child.”
- An affidavit sworn by [REDACTED] on July 23, 2002, in which she states that she became the common-law wife of the applicant’s father on July 29, 1928 and that she and [REDACTED] were not formally married until 1958.
- A Certificate of Marriage, issued on December 11, 2002, by the Parish of St. Sebastian, Diocese of Bacolod, documenting the October 22, 1958 marriage of the applicant’s parents.

The AAO also finds that the record provides evidence in support of the legitimate nature of the applicant’s birth. This evidence, submitted in support of the first Form N-600 filed by the applicant, includes:

- A Certification from the Records Management and Archives Office, Manila, The Philippines, dated July 2, 1991, stating that no record of a marriage between the applicant’s parents in 1929 exists in the National Archives.
- A Certification from the Office of the Local Civil Registrar, Municipality of Sagay, Negros Occidental, Republic of The Philippines, dated July 11, 1991, certifying that all Civil Registry Records of Marriages filed in 1944 or previously were burned or destroyed during World War II.
- A birth registration for the applicant, certified on May 10, 1985, indicating that he was born on January 16, 1931 to [REDACTED] and [REDACTED], and that his birth was legitimate.
- A joint affidavit sworn by [REDACTED] and [REDACTED], on June 10, 1991 and June 20, 1991 respectively, stating that they knew both of the applicant’s parents, that the applicant’s parents were legally married on July 9, 1929 in The Philippines, and that they attended the ceremony.
- A March 4, 1988 statement from [REDACTED] attorney-at-law in Manila, stating that the applicant’s parents were married in a civil ceremony on July 29, 1928 and that, in 1958, they decided to have a religious ceremony.
- A Certificate of Birth, which is certified as of January 26, 1931 and indicates that the

applicant was born to [REDACTED] and [REDACTED] on January 16, 1931 and that his birth was legitimate.

On appeal, the applicant contends that he should be considered as having been born out-of-wedlock since the only primary documentation of his parents' marriage is their 1958 marriage contract, which lists each of them as single. In a letter dated July 30, 2002, the applicant asserts that if his parents had been civilly married at the time of their 1958 religious ceremony, they would have been identified as "civilly married," rather than "single." He claims that his parents told him that they had previously claimed to have been married in a civil ceremony because they wished to spare him and his siblings the stigma of being called illegitimate. As further proof that his parents were not married prior to 1958, the applicant points to the July 23, 2002 affidavit sworn by his mother who attests that, on July 29, 1928, she became his father's common-law wife.

While the AAO acknowledges the applicant's claim to have been born out-of-wedlock, it finds the evidence of record in support of this claim to be insufficient to overcome the proof offered by the contemporaneous birth certificate, issued on January 26, 1931 and that issued on May 10, 1985, which reflects the applicant's 1931 birth record on file with the **Philippines National Archives**. **Both documents indicate that the applicant was born to [REDACTED] and [REDACTED] on January 16, 1931 and that his birth was legitimate.** While the AAO notes that the record does not offer documentary proof that the applicant's parents were civilly married in or around 1929, it also observes that the unavailability of their civil marriage certificate has been adequately explained by the Office of Local Civil Registrar, Municipality of Sagay, The Philippines. With no available record of their civil marriage and with their religious marriage occurring approximately 30 years thereafter, the fact that the applicant's parents were deemed to single at the time their 1958 religious ceremony was registered is not dispositive proof of their true marital status in 1958. Further, the AAO notes that the marriage contract offers only three choices for identifying marital status: "single, widowed or divorced." There is no option for "civilly married."

The AAO also observes that, in connection with his first Form N-600, the applicant submitted a joint affidavit from [REDACTED] and [REDACTED], who state they attended the marriage of his parents on July 9, 1929. This affidavit identifies by name the individual who performed the civil ceremony and also the witnesses who were present. In a separate statement, dated March 4, 1988, a Manila attorney, [REDACTED] also attests to the civil marriage of the applicant's parents prior to the applicant's birth. While the AAO notes that the statement by [REDACTED] indicates that the marriage took place on July 29, 1928, it does not find this discrepancy with the joint statement sworn by [REDACTED] and [REDACTED] to be significant considering the amount of time that passed between the date of the marriage and the dates on which [REDACTED] and [REDACTED] made their statements.

The AAO acknowledges the applicant's submission of his mother's 2002 affidavit stating that she was not civilly or religiously married to the applicant's father until 1958 and the baptismal record issued in 2002, which indicates that the applicant was baptized on May 16, 1931 as an illegitimate child. Again, however, *the statement given by the applicant's mother in 2002 and the 2002 certification of the applicant's baptism do not overcome the documentary proof of legitimacy provided by the applicant's birth certificates.*

The baptismal certificate issued in 2002 indicates that at the time of his May 1931 baptism, the applicant was identified as illegitimate. However, the record fails to indicate how, if the baptismal certificate is accurate, the applicant's 1931 birth would have been recorded as legitimate on the two birth certificates found in the record, one of which was issued contemporaneously. If the baptismal record is correct and the applicant was born-out-of wedlock, the nature of his birth should also be reflected in the primary records documenting it. The AAO notes that the format of both birth certificates requires the birth being documented to be identified as either legitimate or illegitimate, and that both certificates specifically record the applicant's birth as legitimate. In that the baptismal certificate is secondary evidence of the applicant's birth, it is insufficient to rebut the evidence provided by the applicant's birth certificates.

The AAO also finds the contemporaneously-issued birth certificate declaring the applicant's birth to be legitimate and the 1991 joint affidavit from [REDACTED] and [REDACTED] naming the judge and witnesses at Ms. [REDACTED] wedding, as well as [REDACTED]'s statement, to rebut the testimony she has provided in her 2002 affidavit. Moreover, although [REDACTED] affidavit provides a specific date on which, she states, she and [REDACTED] entered into a common-law relationship, that date, July 29, 1928, is the same date on which Mr. [REDACTED]'s 1988 statement indicates that she married [REDACTED] in a civil ceremony. The record, however, does not address or explain this inconsistency and the AAO notes that it is incumbent upon the applicant to resolve such discrepancies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the 1958 marriage contract, the baptismal certificate issued in 2002 and [REDACTED]'s affidavit, neither independently nor collectively, establish the applicant's 1931 birth as other than legitimate.

"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). As the applicant was born in 1931 to a U.S. citizen father, he must satisfy the requirements of section 1993 of the Revised Statutes of the United States, 1878, the nationality law in place at the time of his birth, which states:

All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose father were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

The AAO notes that, on March 29, 1999, the U.S. Court of Appeals, Ninth Circuit, ruled on the applicant's claim to have acquired U.S. citizenship based on his legitimate birth to a U.S. citizen father. The Ninth Circuit found the applicant subject to the provisions of section 1993 of the Revised Statutes and to have failed to satisfy its U.S. residency requirement as his U.S. citizen father had never resided outside The Philippines. The Court concluded that as "the Philippines was not part of the United States for the purposes of section 1993," the applicant was not eligible for a certificate of citizenship. In issuing its decision, the Ninth Circuit also noted that, had the 1940 Act been in force at the time of the applicant's birth, it would have allowed him to acquire U.S. citizenship based on his father's residence in The Philippines. *See Friend v. Reno*, 172 F.3d 638 (9<sup>th</sup> Cir. 1999).

As the Ninth Circuit, in whose jurisdiction this case arises, has already ruled on the applicant's eligibility under section 1993 of the Revised Statutes, the AAO will not consider the applicant's claim to citizenship under its provisions.

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). The regulation at 8 C.F.R. § 341.2 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." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.