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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED] Office: NEW YORK, NY Date: APR 02 2009

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(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.

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 matter will be remanded to the district director to arrange for the oath of allegiance to be administered to the applicant and, the oath having been taken, to approve the application.

The record reflects that the applicant was born in the Philippines on November 22, 1946. The applicant's mother, [REDACTED] (maiden name, [REDACTED] was born on November 8, 1917 in the Philippines, and derived United States (U.S.) citizenship at birth from her father [REDACTED] who was born in the United States on January 19, 1898. The applicant's father, [REDACTED], was born in Philippines and was not a U.S. citizen. The applicant's parents married on September 16, 1937 in the Philippines.

The applicant was admitted to the United States on a B-2 visa on March 28, 2003. The applicant filed a Form N-600, Application for Certificate of Citizenship, on May 2, 2003. The district director denied the application on September 4, 2004 on the grounds that the applicant had failed to demonstrate that his mother was physically present in the United States or its outlying possessions for a period totaling ten years, at least five of which were after attaining the age of fourteen years, as required by section 301(g) of the Immigration and Nationality Act (INA).

On appeal, counsel contends that the district director erred in evaluating the application under the current section 301 of the Act. Counsel asserts that the applicant was a U.S. citizen at birth, a fact already recognized by the U.S. Department of State when it issued the applicant a U.S. passport on April 15, 1964. Counsel indicates that the applicant lost his citizenship when he failed to meet the retention requirements of then Section 301(b) of the INA by traveling to and residing in the United States prior to his 23rd birthday. Counsel contends that pursuant to the amendment made to section 324 of the INA by section 103 of the Immigration and Nationality Technical Correction Act of 1994 (INTCA), the applicant shall regain his U.S. citizenship upon taking the oath of allegiance required by section 337 of the Act. In support of these assertions, counsel has submitted a copy of a letter dated September 23, 1969 from [REDACTED] at the U.S. Embassy in Manila, Philippines, in which [REDACTED] requested that the applicant go to the United States before his 23rd birthday in order to retain his citizenship; and an approved Application for Passport/Registration (Form FS-176) indicating that the applicant was issued a U.S. passport (no. [REDACTED]) on April 15, 1964.

“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 was born on November 22, 1946. Section 201(g) of the Nationality Act of 1940 is therefore applicable to his derivative citizenship claim.

Section 201 of the Nationality Act of 1940 states, in pertinent part, that the following shall be nationals and citizens of the United States:

- (g) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its

outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided, That*, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years. . . .

In the present matter, the applicant must establish that his mother resided in the U.S. or its outlying possessions for ten years between November 8, 1917 and November 22, 1946, and that five of those years occurred after November 8, 1933, the day she turned sixteen.

The AAO finds that the applicant has met this requirement. The evidence contained in the record reflects that [REDACTED] was born in the Philippines and resided in the Philippines through the date of the applicant's birth. In addition to the evidence previously discussed, counsel has also submitted copies of [REDACTED] birth certificate and passport, which show that she was born in the Philippines, and copies of Applications for Registration, approved by Vice Consul at the U.S. Embassy in Manila on May 12, 1950 and May 16, 1952 respectively, in which [REDACTED] indicated that she had resided in the Philippines from birth. The Philippine Islands were a U.S. territory between April 11, 1899 and July 4, 1946. *See* Act of July 1, 1902, 32 Stat. 692, as amended. The applicant therefore has established that his mother resided in a U.S. territory or outlying possession for the requisite periods prior to the applicant's birth.

However, though the applicant derived U.S. citizenship at birth, the record shows that he lost this citizenship when he failed to meet the retention requirements of section 201(g) of the Nationality Act of 1940 or section 301(b) of the INA, as originally enacted.

As indicated above, section 201(g) of the Nationality Act of 1940 requires that in order to retain citizenship, children born abroad to one citizen and one non-citizen parent must reside in the United States for five years between the ages of 13 and 21. Thus, the applicant must have begun this residence in the United States before November 22, 1962, when he turned sixteen, to meet this requirement.

With the passage of the INA, Congress provided that children born during the period of validity of the Nationality Act of 1940 could also retain their U.S. citizenship by complying with the retention requirements of the INA. Section 301 of the INA, 8 U.S.C. § 1401(c), as originally enacted by the Act of June 27, 1952, Pub. L. 82-414, 66 Stat. 163, provided in pertinent part:

- (b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three year and shall immediately following such coming be continuously physically present in the United States for at least five years: *Provided, That* such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.
- (c) Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: *Provided, however, That* nothing contained in this subsection shall be construed

to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1990, as amended. . . .

Thus, in order to meet the retention requirements of the INA, the applicant must have begun his residence in the United States prior to November 22, 1969, when he turned 23.

The record reflects, and counsel concedes, that the applicant did not meet the aforementioned retention requirements and therefore lost his citizenship as of November 22, 1969. However, counsel asserts that the applicant may reacquire his citizenship by taking the oath of allegiance as provided for by section 324 of the Act, as amended by INTCA.

Section 324(d)(1) of the Act provides in pertinent part:

A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 301(b) (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 337 be a citizen of the United States and have status of citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313.

Thus, the AAO finds that the applicant was a U.S. citizen at birth and will reacquire this citizenship upon taking the oath of allegiance as required by section 337 of the Act. Accordingly, the decision of the district director is withdrawn and the matter is remanded to the district director to arrange for the oath of allegiance to be administered to the applicant and, the oath having been taken, to approve the application.

**ORDER:** The decision of the district director is withdrawn and the matter is remanded. The district director shall arrange for the oath of allegiance to be administered to the applicant and, the oath having been taken, approve the application.