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U.S. Citizenship  
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Services

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FILE:

Office: BUFFALO, NY

Date:

FEB 17 2009

IN RE:

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 301(a)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(3), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Buffalo, New York 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 31, 1960 in Canada. The applicant's mother and father, also born in Canada, both automatically acquired U.S. citizenship at birth. The applicant's parents married on October 22, 1949. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen parents.

In that the applicant was born in 1960, he must establish his claim to U.S. citizenship under section 301(a)(3) of the 1952 Immigration and Nationality Act (1952 Act), as amended, the applicable immigration statute in effect in 1960.

Section 301(a)(3) of the Act, 8 U.S.C. § 1401(a)(3),<sup>1</sup> stated that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside of the United States . . . of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

The field office director found the evidence of record insufficient to establish that, prior to the applicant's birth, either of his parents had resided in the United States. Accordingly, he denied the Form N-600, Application for Certificate of Citizenship. *Decision of the Field Office Director*, dated September 19, 2008.

On appeal, the applicant contends that the record demonstrates that his parents abandoned their residence in Canada and established residence in the United States during April 1955. He states that, as his parents lived a nomadic lifestyle during that time, they considered wherever they were at any given moment to be their residence. The applicant contends that the facts concerning his parents' time in the United States should be read in light of *Matter of N-J-Q*, 4 I&N Dec. 360 (C.O. 1951). *Applicant's letter*, dated October 21, 2008.

The AAO notes that the applicant previously filed an application for a certificate of citizenship under section 301(a)(3) of the 1952 Act, which was denied by the District Director, Buffalo, on January 25, 2007. On May 9, 2007, the AAO dismissed the applicant's appeal of that decision, finding the evidence of record sufficient to prove that the applicant's parents were physically present in the United States prior to his birth, but not to establish U.S. residence for the purposes of section 301(a)(3) of the Act.

The issue before the AAO is, again, whether the record establishes that prior to his January 31, 1960 birth, one of the applicant's U.S. citizen parents had a residence in the United States, as defined by section 101(a)(33) of the 1952 Act, 8 U.S.C. § 1101(c):

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<sup>1</sup> Now section 301(c) of the Act, 8 U.S.C. § 1401(c),

the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

In *Savorgnan v. United States*, 338 U.S. 491, 505 (S.C. 1950), the Supreme Court also interpreted residence as the principal dwelling place of a person without regard to intent. Therefore, to satisfy the residence requirement of section 301(a)(3) of the 1952 Act, the applicant must demonstrate that his parents' trip to the United States in April 1955 established the United States as their principal place of dwelling.

In support of the current application, the record contains previously submitted documentary evidence, including affidavits sworn by the applicant's parents and maternal grandmother, and photographs documenting their 1955 travel in the United States; letters from the applicant, dated January 28, 2008 and October 21, 2008; and copies of decisions issued by the legacy Immigration and Naturalization Service (INS), now U.S. Citizenship and Immigration Services (USCIS), and the U.S. District Court, N.D. California.

In his January 28, 2008 letter, the applicant asserts that his application for a certificate of citizenship should be adjudicated favorably in light of the language of *Matter of N-J-Q-*. He contends that, as the legacy INS found the appellant in *Matter of N-J-Q-* to have established his residence upon arrival in the United States, it is, therefore, appropriate to find that his parents established their U.S. residence for the purposes of section 301(a)(3) of the Act upon their April 7, 1955 arrival in the United States. The applicant states that to conclude otherwise is "to call into question the retained citizenship of NJQ and all others whose derived or acquired citizenship is dependent on 'residence'."  
.."

While the AAO notes the applicant's interpretation of *Matter of N-J-Q-*, it does not find it persuasive in this matter. The issue addressed by the legacy INS in the referenced case is not that which is now before the AAO. In *Matter of N-J-Q-*, the appellant was the child of a U.S. citizen who had arrived in the United States in compliance with the retention requirements of section 201(g) of the 1940 Act., i.e., to take up *residence* in the United States for five years between his 13<sup>th</sup> and 21<sup>st</sup> birthdays. The only issue before the legacy INS was whether or not the applicant had complied with the retention requirements of section 201(g) of the 1940 Act by beginning his five-year residence in the United States prior to his 16<sup>th</sup> birthday, the last point at which he could acquire five years of residence prior to turning 21 years of age.

Based on the evidence of record, the agency determined that although the appellant had not been inspected until he arrived in New York several days after he turned 16 years of age, he had begun his residence in the United States for the purposes of section 201(g) at the time of his arrival in Shemya, Aleutian Islands, Alaska prior to his 16<sup>th</sup> birthday. The issue of whether the appellant's arrival constituted the start of his residence in the United States was never in question in *Matter of N-J-Q-* as he was documented with a consular travel letter that established his arrival in the United States as compliance with the residency requirements of section 201(g) of the Nationality Act of 1940. Accordingly, the circumstances of the appellant's arrival in the United States in *Matter of N-J-Q-* are not comparable to those of the applicant's parents in April 1955. The issue before the AAO is not when the applicant's parents established residence in the United States, but whether they did so.

The applicant also asserts that, under the preponderance of evidence standard, the photographs of his parents in the United States should be accepted as proof that the United States was their principal dwelling place. He further contends that the affidavits sworn by his parents and maternal grandmother present more convincing evidence than that offered in *Matter of N-J-Q*. In further support of his claim that his parents' established U.S. residence in April 1955, the applicant maintains his parents had abandoned their Canadian residence when they were in the United States, having no dwelling place other than their car. The applicant further asserts that the record clearly establishes his parents' abandonment of their Canadian residence and that the Field Office Director accepted this fact.

An affidavit sworn by the applicant's father on December 30, 2004 indicates that he was physically in the United States for a few days in the years 1947 and 1948; traveled through Detroit, Michigan and Minnesota in December 1953, commuting by bus for work-related education courses; and on April 7, 1955 traveled to Spokane, Washington with the applicant's mother where they stayed for a "short time," sleeping in their car and staying in motels. The affidavit provided by the applicant's mother reports that she and her husband traveled to the United States in April 1955, living out of their car and staying in motels when that was financially possible. The applicant's mother indicates that while in the United States, she and the applicant's father lived in the states of Washington, Idaho and Montana, and that they arrived in the United States intending to stay in either Washington or Idaho for the foreseeable future. A change of plans resulted in their return to Saskatchewan on or before April 20, 1955, a date fixed by a photograph of the applicant's parents and his maternal great grandparents, which the applicant's mother indicates was taken on April 20, 1955 in Saskatchewan.

As the AAO concluded in its May 9, 2007 review of the above evidence, the submitted affidavits and photographs do not demonstrate that either of the applicant's parents established a residence, as residence is denied by the 1952 Act, in the United States prior to his birth. Although the AAO notes that the applicant's father indicates that he was twice in the United States prior to 1955, the record offers no proof to support his claims regarding these earlier visits. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). [REDACTED]'s claims of a 1955 trip to the United States are supported by an affidavit sworn by [REDACTED]'s mother and photographs. While this documentation is sufficient to prove that the applicant's parents were physically present in the United States prior to his January 31, 1960 birth, they do not establish that the United States as their principal place of abode. Although the AAO notes the assertion made by the applicant's mother that she and the applicant's father entered the United States intending to stay for the "foreseeable future," the definition of residence is based on objective fact and intent is not relevant to a determination of residence. *See Savorgnan v. United States, supra*. Accordingly, the affidavits and photographs do not, by a preponderance of the evidence, demonstrate that in April 1955 the applicant's parents resided in the United States.

The applicant also cites to *Toy Teung Kwong v. Acheson*, 97 F.Supp. 745 ( N.D. Ca. 1951), in which, he contends, the judge found the transitory lifestyle of his parents in April 1955 to be encompassed by the definition of principal dwelling place. While the AAO notes the court's discussion of the range of situations that may establish the principal dwelling place of a person, it also observes that the court found the determination of principal dwelling place to be a question of fact to be decided

on a case-by-case basis. In *Toy Teung Kwong v. Acheson*, the court considered whether a U.S. citizen who had not been physically present in the United States for the length of time necessary to pass U.S. citizenship on to his son, had, nevertheless, met the residency requirement of section 201(g) of the Nationality Act of 1940. The court found that the U.S. citizen's presence in China for nearly three years did not alter the fact that his principal dwelling place was the United States and, therefore, that he satisfied the residency requirement of section 201(g) and could transmit his U.S. citizenship to his son. The facts in *Toy Teung Kwong v. Acheson* are unrelated to those in the present case. Accordingly, the AAO finds that *Toy Teung Kwong v. Acheson* does not support the applicant's claim that his parents' travel through the United States constituted U.S. residence.

The AAO also finds that the record fails to support the applicant's claims that he has proved that when his parents traveled to the United States, they had abandoned their Canadian residence and that the field office director accepted this as fact. While the AAO acknowledges the statements made by the applicant's parents regarding their time in the United States, neither affidavit supports the conclusion that they, in traveling to the United States, had abandoned their residence in Canada. Having reviewed the decisions issued by the district director and field office director with respect to the applicant's two Form N-600s, the AAO does not find the issue of abandonment to have been addressed in either decision. Therefore, it also finds no basis on which the applicant is able to conclude that either the district director or field office director accepted as fact that his parents had abandoned their Canadian residence when they traveled to the United States in 1955.

For the reasons discussed above, the AAO finds the record to contain insufficient evidence to establish that, prior to the applicant's birth, either of his parents had a residence in the United States, as required by section 301(a)(3) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship.

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). As previously noted, 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. The appeal will, therefore, be dismissed.

**ORDER:** The appeal is dismissed.