

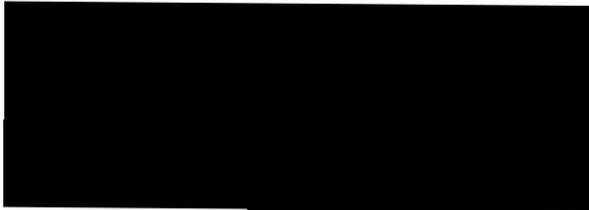
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U.S. Citizenship
and Immigration
Services



E₂

FILE:

Office: NEW YORK

Date: FEB 20 2009

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 301 of 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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in the Dominican Republic on September 28, 1959. His parents, as listed in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in the Dominican Republic in 1933. The applicant's father was born in Puerto Rico on March 5, 1902. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, claiming that he acquired U.S. citizenship from his father at birth.

The district director found that the applicant had failed to establish that his father was a U.S. citizen. Specifically, the director determined that because the applicant's father was not residing in Puerto Rico or another U.S. territory on January 13, 1941, he was not a U.S. citizen.¹ Based upon this finding, the director concluded that the applicant did not acquire U.S. citizenship at birth.

On appeal, the applicant maintains that he was not required to establish his father's residence in the United States on January 13, 1941. The applicant notes that his father's U.S. passport is in the record, and that he was physically present in a U.S. territory prior to his birth in 1959.

"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 was born in 1959. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.²

Section 301(a)(7) of the former Act stated that the following shall be nationals and citizens of the United States at birth:

[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.

The applicant must therefore first establish that his father was a U.S. citizen at the time of his birth.

The AAO finds that the applicant has established that his father was born in Puerto Rico in 1902. The applicant's father's birth certificate is unavailable. *See* Negative Certificate of Birth issued in

¹ The director cited section 302 of the Act, 8 U.S.C. § 1402, which provides, in relevant part:

All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941.

² Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

1998. Nevertheless, the applicant has submitted his father's baptismal certificate, a declaration made by his uncle, his parent's marriage certificate, and his father's U.S. passport and passport records. These documents sufficiently establish that the applicant's father was born in Puerto Rico in 1902.

The question remains whether the applicant's father obtained U.S. citizenship by virtue of his birth in Puerto Rico in 1902. In determining this question, the AAO must consider the Act of March 2, 1917, Pub.L. 64-368, 39 Stat. 951 (the Jones Act), which granted U.S. citizenship to all Puerto Rican citizens.³ The AAO further notes that in the Act of June 27, 1934, Pub. L. 73-477, 48 Stat. 1245, granted U.S. citizenship to all persons born in Puerto Rico after April 11, 1899 who were not nationals of another country. The director erred in citing section 302 of the Act, 8 U.S.C. § 1402, because the applicant's father was already a U.S. citizen in 1941 (when that section took effect).⁴ The AAO finds that the applicant's father was a U.S. citizen.⁵

The AAO further finds that the applicant has provided sufficient evidence to establish that his father was physically present in the United States for ten years prior to 1959, five of which while over the age of 14 (after 1916). Evidence in the record indicates that the applicant's father resided in Puerto Rico from birth until 1922. Specifically, the AAO notes the applicant's uncle's declaration which corroborates the applicant's claim that his father resided in Puerto Rico from birth until 1922. The AAO notes that in *Matter of Y*, 7 I&N Dec. 667 (Reg. Comm. 1958), the Regional Commissioner found, in pertinent part, that, "[a]s long as the citizen parent resided at any time (for the required period, prior to the birth of the child) in a territory which was then a United States possession . . . the [derivative citizenship] requirement in section 201(g) [of the Nationality Act of 1940, (the Nationality Act)] with respect to the parent's residence is satisfied." The AAO thus concludes that the applicant's father was physically present in the United States or its outlying possessions as required prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met that burden; therefore, the appeal will be sustained.

ORDER: The appeal is sustained.

³ Section 5 of the Jones Act provided, in relevant part, that

[a]ll citizens of Porto Rico . . . and all natives of Porto Rico who were temporarily absent from the island on [April 11, 1899], and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States.

⁴ The language of section 302 of the Act specifically excludes those persons "not citizens of the United States under any other Act."

⁵ The AAO notes that the record contains a copy of the applicant's father's U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked.