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U.S. Citizenship and Immigration Services
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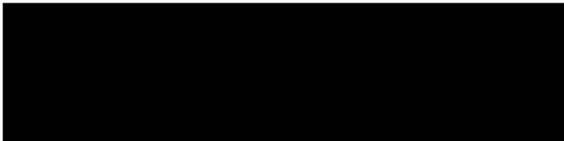
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IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:



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 or reopen, 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, Houston, Texas, 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 February 11, 1956 in Canada. The applicant's parents were [REDACTED] and [REDACTED]. The applicant's mother was a native-born U.S. citizen, born in 1932. The applicant's parents were married in Canada in 1954. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his parents.

The field office director found that the applicant had failed to establish that his father was a U.S. citizen, or that his mother had the required physical presence in the United States. Thus, the director concluded that the applicant did not acquire U.S. citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).¹ The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that it should be presumed that his mother resided in the United States because there is no evidence that she lived in Canada until her marriage in 1954. He further claims that it should be presumed that his father was a U.S. citizen at birth, because both his parents (the applicant's paternal grandparents) were born in the United States (and were not citizens of Canada). In support of the appeal, the applicant submits his grandfather's birth certificate and his mother's high school records, as well as Canadian immigration records indicating his grandparents were not Canadian citizens.

The AAO notes that "[t]he 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 1956. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former Act states 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by

¹ 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.

such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his mother was physically present in the United States for at least 10 years prior to 1956, five of which after 1946 (when his mother turned 14 years old).

The record contains, in relevant part, a copy of the applicant's birth certificate, a copy of the applicant's parent's marriage certificate, a copy of the applicant's parents' death certificates, a copy of the applicant's mother's high school records. The record also contains evidence relating to the applicant's mother's presence in the United States after the applicant's birth in 1956 (such as the applicant's brother's birth certificate) and copies of the applicant's school records. As noted above, the record also contains Canadian immigration records indicating the applicant's paternal grandparents were not Canadian citizens and the applicant's grandfather's birth certificate indicating he was born in the United States. The applicant's grandfather's death certificate indicates that he was a U.S. citizen.

With respect to the applicant's mother's physical presence in the United States, the AAO notes that the only relevant evidence in the record is her birth certificate and school records. This evidence demonstrates that she was present in the United States at birth, and from 1945 to 1949. The applicant therefore has failed to establish, by a preponderance of the evidence, that his mother had the required 10 years of physical presence prior to 1956, five of which after 1946.

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 regulations, at 8 C.F.R. § 341.1, clearly state that the "application shall be supported by documentary and other evidence essential to establish the claim citizenship."

The AAO cannot, as is suggested by counsel, presume that the applicant's mother was present in the United States from birth until 1954. The record does not include any relevant, probative and credible evidence of the applicant's mother presence in the United States other than at the time of her birth and during high school. The AAO likewise cannot presume that the applicant's father was a U.S. citizen. The record suggests that the applicant's grandparents were not Canadian citizens, and that the applicant's grandfather was born in the United States. Nevertheless, there is no evidence that either grandparent had the required residence or physical presence in the United States to transmit U.S. citizenship to the applicant's father, or that the applicant's father otherwise acquired

U.S. citizenship.² The applicant therefore cannot establish eligibility for U.S. citizenship under section 301(a)(3) of the former Act, 8 U.S.C. § 1401(a)(3).³

Therefore, the applicant has failed to meet his burden to establish that his mother had the physical presence required by section 301(a)(7) of the former Act or that his father was a U.S. citizen such that he could establish eligibility for U.S. citizenship under section 301(a)(3) of the former Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.

² The applicant's father's death certificate indicates that he was a U.S. citizen. A death certificate, however, is not conclusive proof of citizenship.

³ Section 301(a)(3) of the former Act was re-designated as section 301(a)(c) by the Act of October 10, 1978, Pub.L. 95-432, **92 Stat. 1046**. It provides for U.S. citizenship for individuals born outside 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 . . . prior to the[ir] birth."