

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

[REDACTED]

E₂

FILE:

[REDACTED]

Office: NEW YORK

Date:

JUN 25 2009

IN RE:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 301(a)(7) of the former
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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 appeal will be sustained.

The record reflects that the applicant was born on June 6, 1974 in the Dominican Republic. The applicant's parents, as indicated on his birth certificate, were [REDACTED] and [REDACTED]. The applicant's parents were married in the Dominican Republic in 1966. The applicant's father became a U.S. citizen upon his naturalization in 1960.¹ The applicant's parents are both deceased. The applicant was admitted to the United States as a lawful permanent resident in 1983. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The district director found that the applicant had failed to establish that his father had the required 10 years of physical presence in the United States prior to his birth, and therefore concluded that he did not derive U.S. citizenship under section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).²

On appeal, the applicant, through counsel, indicates that he has provided ample evidence of his father's physical presence in the United States. The applicant maintains that the statute does not require that he establish that his father's presence in the United States have been continuous and uninterrupted. Further, the applicant claims that his citizenship claim should be granted because the Immigration Judge already found him eligible for citizenship.

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 1974. 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 The applicant's father was born on March 11, 1894 in St. Thomas, Virgin Islands. The Virgin Islands became part of the United States in 1917. Section 306 of the Immigration and Nationality Act (the Act) provides for U.S. citizenship for individuals born in the Virgin Islands prior to 1917 provided they met certain residency requirements (which the applicant's father did not).

² The director incorrectly cited to section 301(g). Although the requirements of sections 301(a)(7) and 301(g) were the same until 1986, section 301(a)(7) of the former Act was not re-designated as section 301(g) until 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 father was physically present in the United States for at least 10 years prior to June 6, 1974, five of which after March 11, 1908 (when his father turned 14 years old).

The record contains, in relevant part, a copy of the applicant's father's naturalization petition, the transcript of his immigration court proceedings and the findings of the immigration judge that the applicant's father was present in the United States from 1951 to 1953, from 1955 to 1960, in 1968-1969 and in 1971-1972, a copy of his father's social security statements indicating earned income in the years 1951-53, 1955-59, and 1968, the applicant's sister's naturalization petition, and copies of consular documentation indicating that that applicant's father resided in the Virgin Islands from birth until 1912 and from 1926-1928, in the United States from 1951-1953, and from 1955 until his naturalization (in 1960). The documentary evidence provided corroborates the applicant's claim that his father resided in the United States or its outlying possessions for ten years prior to his birth in 1974 (five of which after 1908).

The AAO finds, based on the evidence in the record, that the applicant has established that his father resided in the United States or its outlying possessions for ten years prior to his birth in 1974 (five of which after 1908) as required by section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The AAO notes that, as the applicant noted, continuous or uninterrupted physical presence is not required by section 301(a)(7). The AAO further notes that the fact that the applicant's father was unable to transmit citizenship to his sister is irrelevant to the applicant's claim, given that the sister at issue was born in 1966 and the applicant in 1974 (and there is evidence that the applicant's father was present in the United States in 1968-1969 and 1971-72).

The AAO notes that the immigration judge does not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the immigration judge's termination of removal proceedings against the applicant was based on the judge's jurisdictional determination that the U.S. Department of Homeland Security had failed to meet its burden of proving the applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence), *see also Minasyan v. Gonzalez*, 401 F.3d 1069 (9th Cir. 2005) clarifies further that an immigration judge does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with the USCIS citizenship unit and with the federal courts. Nevertheless, analysis by an immigration judge can be persuasive and sworn, credible testimony obtained in the course of immigration proceedings can provide corroboration to a citizenship claim.

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 AAO concludes that the applicant has met his burden to establish eligibility for U.S. citizenship. The appeal is therefore sustained.

ORDER: The appeal is sustained.