

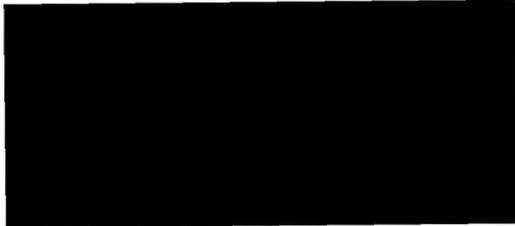
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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Ex

FILE:



Office: PHILADELPHIA

Date:

MAR 06 2009

IN RE:

Applicant:



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:

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.



John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, 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 [REDACTED] in the Dominican Republic. The applicant's father derived U.S. citizenship from his father, the applicant's grandfather. The applicant's mother became a U.S. citizen upon her naturalization in 1998. The applicant was admitted to the United States as a lawful permanent resident in 1978.

The field office director, upon finding that the applicant's father had first arrived in the United States in 1970, concluded that the applicant had failed to establish that his father had the requisite period of physical presence in the United States. The field office director thus determined that the applicant was ineligible to derive citizenship under section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).¹ The field office director also found the applicant to be ineligible to derive U.S. citizen under section 301(a)(3) of the Act, 8 U.S.C. § 1401(a)(3), because the applicant's mother was not a U.S. citizen at the time of his birth.

On appeal, the applicant indicates that he has been residing in a United States territory (Puerto Rico) since 1978. On December 15, 2008, the applicant submitted an additional statement indicating that he agrees with the determination of the field office director. The applicant then also submitted a Form N-400, Application for Naturalization.²

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 on April 15, 1977. 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 such citizen parent may be included in computing the physical presence requirements of this paragraph.

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. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

² The AAO lacks jurisdiction to adjudicate the applicant's Form N-400, Application for Naturalization. The application must be filed with, and adjudicated by, the field office.

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 April 24, 1973, five of which after May 21, 1943 (when his father turned 14 years old).

The field office director found, and the applicant does not dispute, that the applicant's father was not physically present in the United States as required by statute. No other evidence or information was submitted by the applicant, nor is there any evidence in the record to overcome the grounds upon which the applicant's application for certificate of citizenship was denied.

8 C.F.R. § 103.3(a)(1) states in pertinent part that:

(v) **Summary dismissal.** An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The AAO finds that the applicant's appeal fails to identify any erroneous conclusion of law or statement of fact in the field office director's decision. The appeal is therefore summarily dismissed.

ORDER: The appeal is summarily dismissed.