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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: PHILADELPHIA

Date: **MAR 18 2009**

IN RE:

APPLICATION: Application for Certificate of Citizenship under Section 303 of the Immigration and Nationality Act; 8 U.S.C. § 1403.

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 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, 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 January 8, 1970 in the Panama Canal Zone. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]

The applicant's mother became a U.S. citizen upon her naturalization in 1995, when the applicant was 25 years old. The applicant claims that he acquired U.S. citizenship at birth through his mother and seeks a certificate of citizenship pursuant to section 303 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1403.

The field office director determined that the applicant did not acquire U.S. citizenship through his mother because she was not a U.S. citizen at the time of the applicant's birth. The applicant filed a Motion to Reconsider, which the field office director denied on October 3, 2008. This appeal followed.

On appeal, the applicant maintains that the statute does not require that his mother be a U.S. citizen at the time of his birth, and that he therefore acquired U.S. citizenship pursuant to section 303 of the Act, 8 U.S.C. §1403.

“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 in this case was born in 1970. Section 303 of the Act applies in this case, and provides as follows:

- (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of [the Act of August 4, 1937, Pub. L. 75-242, 50 Stat. 558], whose father or mother or both *at the time of the birth of such person* was or is a citizen of the United States, is declared to be a citizen of the United States.

8 U.S.C. § 1403 (emphasis added).

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's mother's naturalization certificate, and the applicant's legal briefs. The record establishes that the applicant was born in 1970, in the Panama Canal Zone, to Panamanian parents. It is further established that his mother became a U.S. citizen upon her naturalization in 1995, when the applicant was 25 years old.¹ The AAO therefore concludes that the applicant did not acquire U.S. citizenship at birth under section 303 of the Act, 8 U.S.C. § 1403.

¹ The applicant therefore did not derive U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432 (repealed), or any other provision of the Act which would require the applicant's parent's naturalization prior to his 18th birthday.

In view of the plain language of the statute (requiring that the applicant's mother be a U.S. citizen at the time of the applicant's birth), the applicant's legal arguments are without merit and his reliance on cases such as *Farrell v. United States*, 381 F.2d 368 (9th Cir. 1967) is misplaced.

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 applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.