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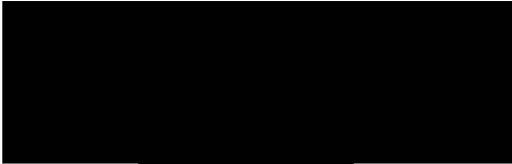
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
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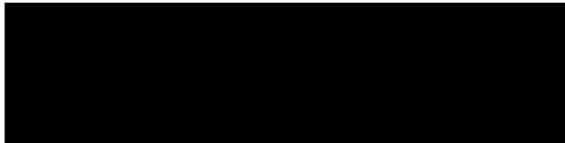
FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: **NOV 18 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301(g) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(g) (1980)

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).

*Perry Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Philadelphia, Pennsylvania and the Administrative Appeals Office (AAO) dismissed the applicant's subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider its prior decision. The motion will be dismissed.

*Pertinent Facts and Procedural History*

The record shows that the applicant was born on May 20, 1980 in India. The applicant's father, [REDACTED] was born in India on January 13, 1941 and became a U.S. citizen upon his naturalization on June 6, 1979. The applicant's mother was naturalized as a U.S. citizen in 2007. The applicant sought a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his father had the required physical presence to transmit U.S. citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The application was accordingly denied.

On appeal, the applicant, through counsel, claimed that his father was present in the United States for a period sufficient for the applicant to acquire U.S. citizenship under both section 301(a)(7) of the former Act and section 301(g) of the Act, 8 U.S.C. § 301(g), as amended in 1986.

In its September 3, 2009 decision, incorporated here by reference, the AAO determined that the preponderance of the evidence did not establish that the applicant's father was present in the United States for periods sufficient to transmit citizenship to the applicant under section 301(g) of the former Act.

The AAO explained the general principle that 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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (internal citations omitted). Because the applicant was born in 1980, section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect prior to the amendments enacted by the Act of November 16, 1986, Pub. L. 99-653, 100 Stat. 3655, applied to the applicant's case.<sup>1</sup>

Section 301(g) of the former Act, 8 U.S.C. § 1401(g) (1980), provided that

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

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<sup>1</sup> The AAO noted that 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.

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 [shall be a citizen of the United States].

In order to acquire U.S. citizenship through his father, the applicant must establish that his father was present in the United States for a period of ten years prior to his birth in 1980, at least five of which were after his father turned 14 in 1955. In its prior decision, the AAO discussed the relevant evidence of record,<sup>2</sup> which did not establish the applicant's claim that his father began residing in the United States in 1969. The AAO determined that the affidavits of the applicant's mother and uncle failed to provide detailed and probative information sufficient to demonstrate the requisite physical presence of the applicant's father in the United States before his birth.

#### *Counsel's Claims on Motion*

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, counsel makes four claims on motion, three of which are identical to those he presented on appeal and one new claim which does not merit reconsideration of our prior decision. First, counsel again claims that the applicant established his father's physical presence required for him to acquire citizenship under section 301(g) of the former Act as amended in 1986, which shortened the requisite physical presence of the U.S. citizen parent to at least five years prior to the child's birth with at least two years after the parent turned 14 years old. Counsel provides no explanation or support for why section 301(g) of the former Act, as amended in 1986, should be retroactively applied to the applicant's case and this portion of his brief on motion is identical to the same section of his brief on appeal. *Compare Memorandum in Support of Motion to Reopen and Reconsider*, dated September 30, 2009 at 4 with *Memorandum in Support of Appeal*, dated July 6, 2009 at 4. Counsel also fails to acknowledge that in 1988 Congress explicitly prescribed that the shorter period applied only to individuals born on or after

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<sup>2</sup> The AAO noted that the record contained, in relevant part, the applicant's birth certificate, the applicant's father's naturalization certificate, the applicant's parent's marriage certificate (indicating they were married in India in 1976), the applicant's brother's birth certificate (indicating he was born in New York in 1978), and sworn statements executed by the applicant's mother and uncle.

November 14, 1986.<sup>3</sup> Accordingly, this issue does not warrant reconsideration.

Second, counsel asserts for the first time on motion that section 320(a) of the present Act should be applied retroactively to the applicant, who would have acquired citizenship because he was under 18 years old at the time of his father's naturalization. *Memorandum in Support of Motion* at 4-5. Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. *See* CCA § 104. The CCA only benefited individuals who were under 18 years old on that date. *See* CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant in this case was 20 years old when the CCA went into effect. Consequently, the amended section 320 of the Act does not apply to him. Counsel cites no legal precedent or other authority to support his assertion that section 320(a) of the Act should be retroactively applied to the applicant and his claim does not merit reconsideration of our prior decision.

Third, counsel repeats his claim that the application should be approved because the applicant has substantial ties to the United States. *Memorandum in Support of Motion* at 8-9. Counsel made the same assertion on appeal. *See Memorandum in Support of Appeal* at 7-8. Counsel again cites no binding legal authority in support of this claim on motion, but instead states that the applicant has no ties to India and that his family would suffer exceptional hardship if he is not deemed to be a U.S. citizen. *Id.* at 9. USCIS records show that the applicant is currently in removal proceedings before the York, Pennsylvania Immigration Court and his next hearing is scheduled for December 1, 2009.

While the consequences of the denial of the instant application are understandably difficult for the applicant and his family to contemplate, the requirements for citizenship are statutorily mandated by Congress, and USCIS lacks authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). The applicant's ties to the United States and his family's hardship are consequently not relevant to the applicant's eligibility for citizenship and do not warrant reconsideration of our prior decision.

Finally, counsel reasserts on motion that the applicant acquired citizenship through his father under section 301(g) of the former Act as in effect at the applicant's birth in 1980. *Memorandum in Support of Motion* at 5-8. Counsel again asserts that the applicant's father entered the United States without inspection and has no documentation of his presence in the country prior to 1971

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<sup>3</sup> Section 8(r) of the Immigration and Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609, added section 23 to the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655, which stated that the shorter period was not retroactive.

because he was afraid to disclose his lack of legal immigration status. Counsel reiterates that because the applicant's father is deceased and his initial entry to the United States was over 40 years ago, "it would be extremely difficult to obtain records [of] his presence in this country in 1969." *Id.* at 8. Counsel again claims that the affidavits of the applicant's uncle and mother show that the applicant's father began residing in the United States in 1969. *Id.* at 7-8. Counsel made the same claims on appeal. *Memorandum in Support of Appeal* at 7.

Although counsel cites two additional affidavits submitted on motion in support of his claim that the applicant's father was in the United States for the requisite time, a motion to reconsider must demonstrate that the challenged decision was incorrect based on the evidence of record at the time. *See* 8 C.F.R. § 103.5(a)(3). Counsel fails to cite any legal precedent or other authority, which would demonstrate that the AAO's prior decision on this issue erroneously applied pertinent law or USCIS policy. *See id.* Consequently, this issue does not merit reconsideration of our prior decision.

Counsel's submission of the two additional affidavits also fails to meet the requirements for a motion to reopen. The additional affidavits from the applicant's mother and an acquaintance of the applicant's father reassert that the applicant's father began residing in the United States in 1969. The applicant's mother married the applicant's father in 1976 and her prior affidavit was submitted on appeal. *See Applicant's Parent's Marriage Registration and Affidavit of Applicant's Mother*, dated June 29, 2009. The acquaintance of the applicant's father, [REDACTED] states that she met him in 1969. *Affidavit of* [REDACTED] dated September 28, 2009. On motion, counsel states that [REDACTED] affidavit "was initially unavailable," but he provides no substantive explanation for why her affidavit or the additional statements of the applicant's mother were not previously submitted with the N-600 application or on appeal. *See Memorandum in Support of Motion* at 8. Counsel also cites no new facts that are supported by the additional affidavits, as required for a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Accordingly, counsel's submission fails to meet the requirements for a motion to reopen.

Even if the additional affidavits were considered, they would not establish the requisite presence of the applicant's father in the United States. The applicant's mother explains why she returned to India to give birth to the applicant and why the family does not have any documentation of the applicant's father's presence in the United States 40 years ago. *Affidavit of Applicant's Mother*, dated September 28, 2009. The applicant's mother does not, however, provide any further, probative information regarding the applicant's father's presence in the United States beginning in 1969. [REDACTED] states that she met the applicant at her apartment building in the Bronx in 1969 and later met his wife and older son. *Affidavit of* [REDACTED] Ms. [REDACTED] reports that she and the applicant "were very good friends back then," but she does not provide detailed information such as how long she and the applicant's father resided in the same building, where the applicant worked, how frequently she saw the applicant's father, or any other probative information. *Id.*

*Conclusion*

On motion, counsel largely repeats claims previously made and addressed in our prior decision on appeal. Counsel cites no pertinent precedent decisions to establish that the AAO's prior decision erroneously applied relevant law or USCIS policy, based on the evidence of record at the time. Accordingly, counsel's submission does not meet the requirements for a motion to reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a)(3).

Although counsel submits two additional affidavits on motion, he provides no explanation for why the statements were not available or submitted initially with the application or on appeal even though the two affiants claimed to have knowledge of the applicant's father's presence in the United States beginning in 1969. Counsel also fails to state any new facts supported by the additional affidavits. Accordingly, the affidavits do not meet the requirements for a motion to reopen pursuant to the regulation at 8 C.F.R. § 103.5(a)(2).

The applicant's submission fails to meet the requirements for a motion to reconsider or a motion to reopen. Consequently, the applicant's motion will be dismissed and the AAO's prior decision will be affirmed.

**ORDER:** The motion to reopen and reconsider is dismissed. The September 3, 2009 decision of the Administrative Appeals Office is affirmed.