

identifying data
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



E2

FILE: [REDACTED]

Office: PHILADELPHIA, PA

Date: SEP 03 2009

IN RE: Applicant: [REDACTED]

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

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, 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 May 20, 1980 in India. The applicant's father, [REDACTED] 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 seeks a certificate of citizenship pursuant to section 301 of the 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, contends that section 301(g) of the Act, 8 U.S.C. § 301(g), as amended in 1986, applies to his case. He claims that he has established that his father had the required physical presence under section 301(g) of the Act, or, alternatively, under section 301(a)(7) of the former Act.

"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 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, is therefore the applicable law in this case.¹

Section 301(g) of the former Act, 8 U.S.C. § 1401(g), 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 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 under this provision, the applicant must establish that his father was present in the United States for a period of ten years prior to 1980, at least five of which were after he attained the age of 14 (in 1955).

¹ The AAO notes 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.

The record in this case contains, 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.

The AAO finds that the affidavits and documentary evidence submitted by the applicant do not sufficiently establish that the applicant's father was physically present in the United States for the required period. Specifically, the AAO notes the lack of evidence in the record relating to the applicant's father's physical presence in the United States prior to his admission in November 1971 as a B-1 Visitor. The applicant claims that his father was unlawfully present in the United States from 1969 to 1971. The applicant maintains that his father did not disclose his previous presence in the United States during the naturalization process because he had been in the United States illegally. The AAO notes that the applicant's father's passport indicates that he was in Germany in 1969. The applicant's father's passport notably does not list the United States (or Canada) among the countries for which it is valid. The applicant's uncle indicates in a sworn statement that he believes the applicant's father was in the United States in September 1969. The applicant's mother states in her affidavit that she was told by the applicant's father that he was in the United States in 1969. The affidavits do not provide sufficient detail and are primarily hearsay. There is no corroborating evidence regarding the applicant's father's presence in the United States in 1969, and no evidence at all of his presence here in 1970 or 1971 until his admission in November 1971.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

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

ORDER: The appeal is dismissed.