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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**



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FILE:

Office: TAMPA, FL

Date:

APR 02 2010

IN RE:

APPLICATION: Application for Certificate of Citizenship under Section 1993 of the Revised Statutes,
as amended by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797 (1934).

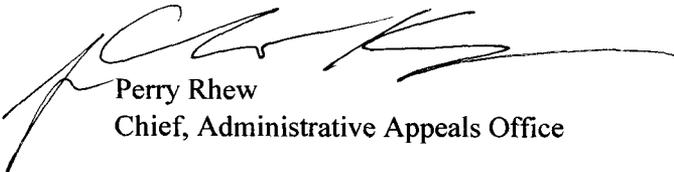
ON BEHALF OF APPLICANT:

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).



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Tampa, Florida, 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 June 19, 1934 in Canada. The applicant's parents, as indicated on his birth certificate, were [REDACTED] and [REDACTED]. The applicant claims that his mother was born near the U.S.- Canadian border on either July or August 1911. The applicant's mother passed away in 1948. The applicant's maternal grandfather was born in the United States in 1889. The applicant's parents were married in New York in 1927. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The district director found that the applicant had failed to establish that his mother was a U.S. citizen. The director therefore denied the application. On appeal, the applicant maintains that he has established his mother was a U.S. citizen by virtue of her birth near the U.S.- Canadian border. See Applicant's Statement on Form I-290B, Notice of Appeal to the AAO.

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." See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in June 1934. Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797 (1934), is therefore the applicable law in this case.

Section 1993 of the Revised Statutes, *supra*, provided, in relevant part:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child

Former section 301(b) of the Immigration and Nationality Act of 1952 (the Act) stated that a child who acquired citizenship at birth abroad must be continuously physically present in the United States for a period of five years between the ages of 14 and 28 in order to retain his or her U.S. citizenship. Section 301(c) of the Act, 8 U.S.C. § 1401(c), "applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did later comply with, the retention requirements of section 201(g) or (h) of the Nationality Act." See 7 FAM 1133.5-2(c). A two-year retention requirement was later substituted retroactively in 1972. See 7 FAM 1133.5-7. Public Law 95-432, effective October 10, 1978, subsequently repealed section 301(b) of the Act, and eliminated completely, the physical presence requirement for retention of U.S. citizenship. See 7 FAM 1133.2-2(d). However, the "[c]hange was prospective in nature. It did not reinstate as citizens those who had ceased to be citizens by the operation of section

301(b) as previously in effect.” *Id.* Thus, “[p]ersons who were subject to section 301(b) and reached age 26 before October 10, 1978, without entering the United States to begin compliance with the retention requirements lost their citizenship on their 26th birthday.” See 7 FAM 1133.5-13(a) and (c). In this case, the applicant was over 26 on October, 10, 1978.

At the outset, the applicant must establish that his mother was a U.S. citizen. The record indicates that she was born in Canada, and there is no evidence that she acquired U.S. citizenship through her father (the applicant’s grandfather) or that she was born within the territory of the United States. The applicant therefore has not established that his mother was a U.S. citizen or, consequently, that he acquired U.S. citizenship at birth through her.

There is also no evidence that the applicant was physically present in the United States as required by the former retention provisions of the Act. The applicant indicates in his Form N-600, Application for Certificate of Citizenship, that he arrived in the United States in 2005. Thus, the applicant did not fulfill the applicable requirements for retention of U.S. citizenship.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that the United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. 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); 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”). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The regulation at 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.