

identifying data deleted to  
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

E<sub>2</sub>

FILE:

Office: PORTLAND, ME

Date:

APR 27 2010

IN RE:

APPLICATION:

Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940, 8 U.S.C. § 601.

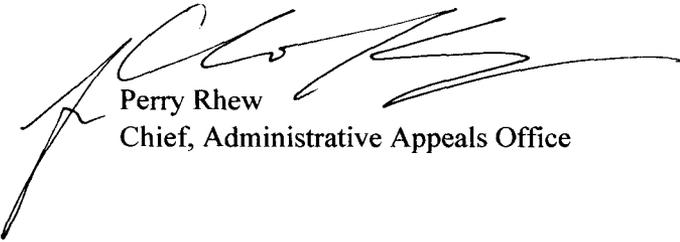
ON BEHALF OF APPLICANT:

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 Field Office Director, Portland, Maine, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Canada on April 2, 1952. His parents, as indicated on his birth certificate, were [REDACTED] and [REDACTED]. The applicant's father was born in New Hampshire on October 27, 1904. The applicant's mother was not a U.S. citizen. The applicant's parents were married in Canada in 1926. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the application finding that the applicant had failed to establish that his father had the required residence in the United States. On appeal, the applicant states that he has been in the United States since he was 15 days old and that his siblings are U.S. citizens. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The applicant was born on April 2, 1942. The Immigration and Nationality Act (the Act) went into effect on December 24, 1952. The Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(i) (1940), is therefore applicable in this case.

Section 201(g) of the Nationality Act stated that the following shall be nationals and citizens of the United States at birth:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien. *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The applicant must thus establish that his father resided in the United States for 10 years prior to April 2, 1952 (the applicant's date of birth), five of which were after October 27, 1920 (the applicant's father's 16th birthday).

The record indicates that the applicant's father was born in the United States in 1904. The record contains a copy of the 1944 Annual Report of the Town of Berwick, Maine, listing the applicant's father's name. The record also contains a copy of the applicant's parents' marriage certificate, indicating that they were married in 1926 in Canada, and evidence that the applicant's older siblings were born in Canada in the 1930s.

The record now also contains several letters submitted by the applicant, his siblings, and acquaintances to [REDACTED]. These letters establish that the applicant has resided in the United States since he was approximately two weeks old, on or about April 17, 1942, but the letters do not address the residence of the applicant's father prior to the applicant's birth. The applicant claims in his letter that his father told him that he had lived in the United States "until he went to Canada in his twenties," but there is no evidence in the record to support this claim.

The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant's father resided in the United States for 10 years prior to 1942, five of which were after 1920. The AAO therefore finds that the applicant has failed to establish his father's required residence in the United States.<sup>1</sup>

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

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> Having found that the applicant did not establish that his father resided in the United States as required, the AAO will not address the issue of the applicant's retention of U.S. citizenship in this decision.