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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**

E₂



FILE:



Office: NEW YORK, NY

Date:

AUG 09 2010

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Section 301 of the
Immigration and Nationality Act, 8 U.S.C. § 1401 (1982).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Switzerland. His father, [REDACTED] was born on [REDACTED] in New York. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Switzerland in 1978. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's citizenship claim upon finding that his father did not have the physical presence in the United States required by former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401. The application was accordingly denied.

On appeal, the applicant, through counsel, states that the applicant's father had the required physical presence in the United States. See Statement of Counsel on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied, in relevant part, by an additional affidavit executed by the applicant's father on February 4, 2010.

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. 2001) (internal citation omitted). The applicant in the present matter was born in 1982. Former section 301(g) of the Act therefore applies to the present case.¹

Former section 301(g) of the Act stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

[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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The applicant must thus establish that his father was physically present in the United States for 10 years prior to 1982, five of which while after the age of 14 (after 1957). The record contains the following evidence relevant to the applicant's father's presence in the United States prior to 1982:

- 1) the applicant's birth certificate

¹ Former section 301(g) replaced former section 301(a)(7) of the Act upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

- 2) the applicant's father's birth certificate
- 3) the applicant's family book
- 4) the applicant's father's transcripts from Williams College and the University of California
- 5) a letter from [REDACTED] a professor at Stanford University
- 6) two affidavits executed by the applicant's father, dated August 13, 2009 and February 4, 2010

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A review of the entire record, including the additional evidence submitted on appeal, establishes that the applicant's father was physically present in the United States from birth (April 1943) until January 1947, for three months in 1958, from September 1963 to March 1969 and during the summer of 1978. The applicant's father's 2010 affidavit explains that he was in the United States for two weeks before and two weeks after serving as a visiting scholar at Stanford in 1978. Further, he states that he visited the United States for technical conferences on several occasions between 1973 and 1982. The applicant's father's affidavits are detailed and probative, and supported by documentary evidence. The AAO thus finds that the applicant has established that his father was physically present in the United States for 10 years prior to 1982, five of which after 1957.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has met his burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained. The matter is returned to the New York City Field Office for issuance of a certificate of citizenship.