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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

[REDACTED]

FILE: [REDACTED]

Office: HOUSTON, TEXAS

Date: AUG 10 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 201 of the Nationality Act of 1940,  
8 U.S.C. § 601 (1945).

ON BEHALF OF PETITIONER:

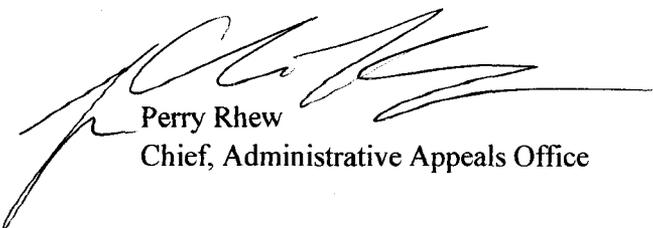
[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Republic of Panama, outside the Canal Zone, on August 10, 1945. The applicant's parents, [REDACTED] and [REDACTED], were married at the time of the applicant's birth. The applicant's father was born in the United States on February 12, 1911. The applicant's mother was born in Panama and was not a U.S. citizen at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to section 201 of the Nationality Act of 1940 ("the 1940 Act"), 8 U.S.C. § 601 (1945), based on the claim that she acquired U.S. citizenship at birth through her father.

The District Director found that the applicant failed to establish that her father met the residency requirements in section 201 of the 1940 Act. *See Decision of the Director*, dated May 19, 2009. The application was denied accordingly. *Id.* On appeal, the applicant claims through counsel that the evidence is sufficient to show that her father met the residency requirements set forth in the 1940 Act. *See Form I-290B, Notice of Appeal*, filed June 19, 2009; *Brief in Support of Appeal*.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1945. Accordingly, section 201 of the 1940 Act is applicable in this case. Although the applicant contends that she meets the requirements set forth in sections 201(c) and (d) of the 1940 Act, *see Brief on Appeal* at 3, these sections are inapplicable because the applicant's mother was not a citizen or national of the United States at the time of the applicant's birth.<sup>1</sup>

Because the applicant was born to one U.S. citizen and one alien parent, section 201(g) of the 1940 Act provides the applicable law. This section 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, 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.

<sup>1</sup> U.S. Citizenship and Immigration Services (USCIS) records indicate that the applicant's mother became a U.S. citizen on January 15, 1998.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of . . . a bona fide American . . . commercial . . . organization, having its principal office or place of business in the United States . . . .

Under section 201 of the 1940 Act, "the place of general abode shall be deemed the place of residence." **Section 104 of the 1940 Act.** Further, "the place of general abode" means an individual's "principal dwelling place," without regard to intent. *Matter of B-*, 4 I&N Dec. 424, 432 (Central Office 1951).

The record does not indicate that the applicant was born within the Panama Canal Zone or that her father was employed by the U.S. government or a commercial organization whose principal office was in the United States. The applicant must therefore establish that her father resided in the United States for ten years before her birth on August 10, 1945 and that at least five of these years were after her father's sixteenth birthday on February 12, 1927. Section 201(g) of the 1940 Act. Additionally, the applicant must show that she resided in the United States or its outlying possessions for a period or periods totaling five years between the ages of 13 and 21, or establish that the retention requirements do not apply to her. *Id.*

The record contains the following evidence relating to the applicant's father's residence in the United States during the relevant periods: a copy of an Ohio birth certificate indicating that the applicant's father was born in Toledo on February 12, 1911; and a letter from [REDACTED] indicating that the applicant's father attended the school during the 1925 - 1926 and 1926 - 1927 school years, and that he attended only one semester in the 1927 - 1928 school year. The Registrar also stated that at the time he attended [REDACTED], the applicant's father lived in Toledo, Ohio, and his address was also listed as Canal Zone, Panama. *See Letter from [REDACTED] Registrar, [REDACTED]*. The applicant also submitted two affidavits from her father's cousins stating that the applicant's father attended school in the United States for four full years from 1926 to 1929, and that he thereafter went to Panama. *See Affidavits of [REDACTED] and [REDACTED]*. The cousins also stated that the applicant's father returned to the United States from Panama during the last six months of 1930, and that he resided in California in 1934 when he was pursuing an acting career. *Id.*; *see also Affidavit of [REDACTED]*, dated Feb. 24, 2009 (same).

In an affidavit filed with her Application for Certificate of Citizenship, the applicant states that her father attended [REDACTED] from 1926 to 1929, and that after graduation he went to Panama to work with the family's plumbing company. *See Affidavit of [REDACTED]* dated Feb. 24, 2009. The applicant states that on an unspecified date, her father "eventually ran the plumbing company on behalf of the family." *Id.*; *see also Affidavit of [REDACTED]* (stating that the applicant's father worked as a buyer for the family plumbing company).

For the first time on appeal, the applicant claims that her father attended elementary school in Toledo, Ohio. *See Affidavit of [REDACTED]* dated July 11, 2009. The applicant's sister also states that their father attended elementary school in Toledo, Ohio, and that he went to college

in Baltimore after he returned to the United States in 1930. *See Affidavit of* [REDACTED] dated July 11, 2009.

The applicant's parents married in Panama on December 28, 1940. *See Marriage Certificate of* [REDACTED] *and* [REDACTED]. The applicant claims that her father "was one of the very few Americans allowed to live outside the Canal Zone . . . because he married into a distinguished [Panamanian] family." *Affidavit of* [REDACTED] dated July 11, 2009.

Here, the evidence in the record is insufficient to show that the applicant's father resided in the United States for ten years before the applicant's birth in 1945, and that five of these years were after his sixteenth birthday in 1927. First, the applicant's claim that her father attended [REDACTED] from 1926 to 1929 is inconsistent with the letter from [REDACTED] indicating that the applicant's father attended two full school years and only attended one semester during the 1927 – 1928 school year. *Cf. Affidavit of* [REDACTED], dated July 11, 2009 *and Affidavits of* [REDACTED] *and* [REDACTED] *with Letter from* [REDACTED]. Although counsel contends that the affidavits and school records are not inconsistent, *see Brief on Appeal* at 7, the applicant's claim that her father attended [REDACTED] until 1929 clearly conflicts with the dates in the letter from the [REDACTED] Registrar. Because the record contains no evidence regarding any other school attended by the applicant's father from 1928 to 1929, only the two and one half year period corroborated by [REDACTED] will be counted toward the applicant's father's residence in the United States.

Second, the applicant's claim on appeal that her father attended elementary school in Toledo, Ohio is lacking in detail, is not corroborated by her father's cousins, *see Affidavits of* [REDACTED] *and* [REDACTED] and is not supported by any other evidence. Accordingly, there is insufficient evidence to support the applicant's father's residence in the United States during his elementary school years. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members). Similarly, the applicant's sister's mere assertion that their father attended college in Baltimore, without more, is of little evidentiary weight. *Id.*

Third, the applicant's father's residence in the United States for six months in 1930, and for one year in 1934, does not satisfy the residency requirements set forth in section 201(g) of the 1940 Act. Additionally, the applicant's claim that her father "was an American who lived in Panama for certain months of the year," *see Affidavit of* [REDACTED] dated July 11, 2009, without more, does not establish that her father's "place of general abode" or "principal dwelling place" before her birth was in the United States, *see Matter of B-*, 4 I&N Dec. at 432.

Finally, the AAO notes that even if the applicant's father could satisfy the applicable residency requirements, the applicant has not presented any evidence that she meets, or is excluded from, the retention requirements set forth in section 201(g) of the 1940 Act.

On appeal, counsel asserts that the applicant's younger sister and brother were "found eligible for derivative U.S. citizenship upon presentation of the same evidence and testimony as submitted by Applicant." The record indicates, however, that different statutory requirements governed the applications of the applicant's younger siblings, who were born in 1949 and 1952, and that the applicant's father may have resided in the United States for additional periods before their births.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that her father resided in the United States for the requisite period and that the applicant retained the claimed citizenship. Accordingly, the applicant is not eligible for citizenship under section 201(g) of the 1940 Act, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.