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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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[Redacted]

FILE:

[Redacted]

Office:

[Redacted]

Date: JUL 19 2010

IN RE:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1956)

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.

Thank you,

[Redacted Signature]

Chief, Administrative Appeals Office

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

The applicant was born [REDACTED]. The applicant's parents were married at the time of the applicant's birth. The applicant's [REDACTED] or [REDACTED] in Cuba and became a U.S. citizen by naturalization on [REDACTED]. The applicant's mother was born in Cuba and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1956), based on the claim that he acquired U.S. citizenship at birth through his father.

The District Director found that the applicant failed to establish that his father was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. *See Decision of the Director*, dated June 5, 2001. The application was denied accordingly. *Id.* On appeal, the applicant claims that the evidence is sufficient to show that his father meets the physical presence requirements. *See Form I-290B, Notice of Appeal*, filed June 21, 2001.¹

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 1960. Accordingly, former section 301(a)(7) of the Act controls his claim to citizenship.²

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

The applicant must therefore establish that his father was physically present in the United States for ten years before his birth on April 4, 1960, and that at least five of these years were after his father's fourteenth birthday on December 22, 1934. *See id.*

¹ The AAO notes that the applicant filed a second Application for Certificate of Citizenship, through counsel, on August 31, 2009. That application has not been adjudicated, but will be rendered moot as the instant appeal will be sustained and the application approved.

² Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

Here, the preponderance of the evidence corroborates the applicant's claim that his father, [REDACTED] was physically present in the United States from 1948 through 1959. Specifically, U.S. Citizenship and Immigration Services (USCIS) records show that [REDACTED] was admitted to the United States on September 9, 1948, when he was 27 years old. *See Immigration Visa and Alien Registration*. Except for a visit to Cuba from December 17, 1952, until April 19, 1953, *see Report of [REDACTED] Departure of Alien with Recentry Permit, Permit to Reenter the United States, [REDACTED]* until his naturalization on July 13, 1954, *see Declaration of Intention* (Form N-315), filed Nov. 14, 1950 (affirming residence in Brooklyn, New York); *Petition for Naturalization*, filed May 18, 1954 (same); *Certificate of Naturalization*, issued July 13 1954.

With the instant Form N-600, the applicant also submitted numerous documents attesting to his father's presence in the United States before his birth. [REDACTED] statements, U.S. Income Tax Returns, and New York State Income Tax Resident Returns corroborate his physical presence and work history in New York during the years 1953 to 1959. *See Tax Records* (indicating employment with Alpha Tank Company and several other employers in New York during this period). Additionally, the record contains: a New York State Department of Labor Identification Card with date stamps in 1953 and 1954; a U.S. Coast Guard Merchant [REDACTED], endorsed in New York on September 13, 1954; a Certificate of Literacy from the University of the State of New York, dated October 12, 1956; and a New York Chauffeur's Renewal License Stub, dated September 27, 1957. Finally, the applicant provided his father's affidavit stating that his father lived and worked in New York from 1948 until 1959. *See Affidavit of Fidel Augusto Martinez*, dated Apr. 25, 2002; *see also Letter from Caridad Maseda*, dated June 13, 2001 (stating that her brother lived in New York from 1948 through 1959); *Letter from Ruben Matos*, dated June 11, 2001 (stating that author worked with Mr. Martinez at Alpha Tank Company from 1951 to 1960).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has established by a preponderance of the evidence that his father was physically present in the United States for a ten-year period before his birth in 1960, and that he is eligible for citizenship under former section 301(a)(7) of the Act. Accordingly, the appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Miami District Office for issuance of a certificate of citizenship.