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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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JUN 28 2010

FILE: [REDACTED] Office: TAMPA, FL Date:

IN RE: Applicant: [REDACTED]

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:

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, 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 in Greece on May 17, 1945. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's mother was born in Boston, Massachusetts on October 28, 1924. The applicant's parents were married in Greece on July 16, 1944. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen mother.

The district director determined that the applicant did not acquire U.S. citizenship under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). The director found, in relevant part, that the applicant had failed to demonstrate that his mother had the required residence in the United States or that he had fulfilled the applicable retention requirements. *See* Decision of the District Director.

On appeal, the applicant seeks reconsideration of his case maintaining that he acquired U.S. citizenship at birth through his mother. *See* Statement Accompanying Appeal. The applicant states that his mother traveled to Greece in 1935 to care for her mother and did not return to the United States until 1945, when he was six months old. *Id.* The applicant claims that World War II made it impossible for his mother to return to the United States earlier than 1945. *Id.*

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 was born in 1945. The Immigration and Nationality Act (the Act) went into effect on December 24, 1952. Section 201(g) of the Nationality Act is therefore applicable in this case.

Section 201 of the Nationality Act states, in pertinent part:

The following shall be nationals and citizens of the United States at birth:

* * *

(g) 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.¹

The applicant must thus establish that his mother resided in the United States for 10 years prior to May 17, 1945 (the applicant's date of birth), five of which were after October 28, 1940 (the applicant's mother's sixteenth birthday).

The record indicates that the applicant's mother was born in the United States in 1928. She was married in Greece in 1944, and returned to the United States with the applicant in 1945. The applicant's parents were divorced in Baltimore, Maryland in 1949. The applicant's father became a U.S. citizen upon his naturalization in 1962. The applicant was never admitted to the United States as a lawful permanent resident. The ship manifest included in the record indicates that the applicant entered as the "unbaptized" son of a U.S. citizen. Further, the record contains affidavits from family members explaining that the applicant's mother left for Greece to care for her mother and returned to the United States after World War II ended, in 1945.

In *Savorgnan v. United States*, 338 U.S. 491, 505, (1950) the U.S. Supreme Court defined the term "residence" as the principal dwelling place of a person, or their actual place of general abode, without regard to intent. When determining the issue of residence, "[t]he inquiry is one of objective fact, and one's intent as to domicile or as to her permanent residence, as distinguished from her actual residence, principal dwelling place, and place of abode is not material." See *Alvarez-Garcia v. Ashcroft*, 293 F.3d 1155, 1157 (9th Cir. 2002)(citations and quotations omitted).

The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant's mother resided in the United States for five years between her sixteenth birthday in October of 1940, and the applicant's birth in May of 1945. Indeed, it is mathematically impossible to establish such residence. The applicant claims that his mother resided in the United States until 1935 and that she would have returned to the United States but was incapable of doing so because of World War II. The applicant suggests that his mother should be deemed to have resided in the United States during World War II. The principle of constructive residence, however, applies only to cases involving *retention* of citizenship and the principle does not apply to the *transmission* of citizenship from a parent to a child. *Drozod v. INS*, 155 F.3d 81, 87 (2nd Cir. 1998). Courts "have rejected the argument that statutory requirements to

¹ Section 201(h) of the Nationality Act further states that "[t]he foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934."

transmit citizenship can be constructively satisfied,” and have clarified that “[t]he application of constructive residence was inappropriate in a citizenship transmission case.” *Id.* (internal citations and quotation omitted). The evidence in the record does not establish that the applicant’s mother resided in the United States for five years between October 28, 1940 (her sixteenth birthday) and May 17, 1945 (the applicant’s birth). Indeed, as previously noted, it is mathematically impossible for the applicant to establish such residence. The applicant therefore did not acquire U.S. citizenship at birth through his mother.²

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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 applicant bears the burden of proof to establish his claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The applicant is ineligible for U.S. citizenship under section 201 of the Nationality Act or any other provision of law. The applicant therefore cannot meet his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² Having found that the applicant did not establish that his mother resided in the United States as required, the AAO need not address the issue of the applicant’s retention of U.S. citizenship.