

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



E2

MAR 29 2010

FILE:



Office: SAN JUAN, PR

Date:

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g) (1980).

ON BEHALF OF APPLICANT:



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, 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, San Juan, Puerto Rico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 17, 1980 in the Dominican Republic. The applicant's father, [REDACTED], was born in Puerto Rico on August 14, 1923. The applicant's parents were married on May 22, 1980. The applicant's mother, [REDACTED], is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his father had the physical presence required under section 301(g) of the Act, 8 U.S.C. § 1401(g) (1980). The director further found that the applicant had failed to establish that [REDACTED] and [REDACTED] is the same person, such that evidence of [REDACTED] physical presence in the United States could be considered in support of the applicant's claim. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that [REDACTED] and [REDACTED] is one and the same person. *See Appeal Brief*. The applicant further claims that he has established that his father had the required physical presence in the United States and that he is therefore entitled to a Certificate of Citizenship. *Id.* The applicant submits no additional evidence in support of his appeal.

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, 1029 (9th Cir. 2000) (internal citations omitted). The applicant in this case was born in 1980. Section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect prior to the amendments enacted by the Act of November 16, 1986, Pub. L. 99-653, 100 Stat. 3655, is applicable to his case.¹

Section 301(g) of the Act, 8 U.S.C. § 1401(g) (1980), provided that

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 [shall be a citizen of the United States]: *Provided*, That any periods of honorable service in the Armed Forces of the United States by

¹ The Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, re-designated section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), as section 301(g). The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

such citizen parent may be included in computing the physical presence requirements of this paragraph.

In order to acquire U.S. citizenship under this provision, the applicant must establish that his father was present in the United States for a period of ten years prior to 1980, at least five of which were after he attained the age of 14 (in 1937).

The record in this case contains, in relevant part, the applicant's certificate of birth in the Dominican Republic, the applicant's father's certificates of birth and death in Puerto Rico, the applicant's parents' certificate in the Dominican Republic, military records indicating that [REDACTED] served honorably in the U.S. Armed Forces from August 1944 to December 1945 and from September 1950 to July 1952, a 1987 Veterans' Affairs document listing the applicant's father's name as "[REDACTED]" and listing the applicant as his child, a sworn statement executed by the applicant's father's wife, copies of the applicant's siblings' birth certificates (indicating they were born in Puerto Rico in 1950, 1951, and 1953), and a copy of the applicant's parents' 1987 divorce judgment.

The AAO finds that the affidavits and documentary evidence establish that [REDACTED] and [REDACTED] is one and the same person. Nevertheless, the record does not establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States or its outlying possessions for 10 years prior to 1980. The documents in the record, at best, suggest that the applicant's father was present in the United States or its outlying possessions from 1944 to 1945, and from 1951 to 1953.

The Supreme Court has explained that "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.