

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

F2

[REDACTED]

FILE:

[REDACTED]

Office:

[REDACTED]

Date: SEP 23 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 (1984)

ON BEHALF OF PETITIONER:

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 Field Office Director, Newark, New Jersey, 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 India on [REDACTED], to married parents [REDACTED] and [REDACTED]. The applicant's father became a U.S. citizen by naturalization on March 5, 1982. The applicant's mother was born in India and was not a U.S. citizen at the time of the applicant's birth. The applicant became a U.S. citizen by naturalization on December 13, 1991. The applicant seeks a certificate of citizenship pursuant to former 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 adjudicated the application under section 320 of the Act, 8 U.S.C. § 1431, and determined that the applicant was not eligible for a Certificate of Citizenship because he is a naturalized U.S. citizen. *See Decision of the Director*, dated Nov. 5, 2008. The application was denied accordingly. *Id.* On appeal, the applicant claims that section 320 of the Act is inapplicable to his case, and that he acquired U.S. citizenship at birth under former section 301(g) of the Act. *See Form I-290B, Notice of Appeal*, filed Dec. 5, 2008; *Letter 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 1984. Accordingly, former section 301(g) of the Act controls his claim to acquired citizenship.

Former section 301(g) 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 no less than ten years before his birth on [REDACTED], and that at least five of these years were after his father's fourteenth birthday on [REDACTED]. *See id.*

The record reflects that the applicant's father was admitted to the United States as an immigrant on November 5, 1973, when he was 31 years old. Although the applicant claims that his father was physically present in the United States until December 15, 1984, *see Form N-600, Application for Certificate of Citizenship*, the applicant's father states that he stayed in Calcutta, India, from December 5, 1983 to May 14, 1984. *See Affidavit of [REDACTED]* dated Nov. 13, 2007; *see also Letter in Support of Appeal at 2* (stating that the applicant's father traveled to India on December 5, 1983). Additionally, the immigration record of the applicant's father indicates that he was absent from the United States for 163 days, or approximately 5.4 months, during the period from December

1973 to August 1980. *See Application to File Petition for Naturalization* (Form N-400) for [REDACTED] filed June 25, 1981. Although the applicant's father entered the United States ten years and eight months before the applicant's birth, U.S. Citizenship and Immigration Services (USCIS) records show that the applicant's father was absent from the United States for 324 days, a period over ten months. Consequently, the applicant cannot establish that his father was physically present in the United States for ten years before the applicant's birth on [REDACTED] as required for the applicant to have acquired citizenship at birth from his father under former section 301(g) of the Act.

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 failed to establish by a preponderance of the evidence that his father was physically present in the United States for the requisite period. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(g) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.