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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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JAN 13 2011

FILE: [REDACTED] Office: CHICAGO, IL 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:

[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 \$630. 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, Chicago, Illinois, 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 August 26, 1944 in Poland. The applicant's father, [REDACTED], was born in South Bend, Indiana on April 18, 1914. The applicant's mother became a U.S. citizen upon her naturalization on September 6, 1960. The applicant's parents were married in Poland in 1936. The applicant was admitted to the United States as a lawful permanent resident in 2009. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father.

The field office director considered the applicant's citizenship claims under sections 301, 320, and 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401, 1431, and 1432. The director found that the applicant had failed to establish that his father had the required 10 years of residence in the United States, including five years after his fourteenth birthday. The director further found that the applicant had not derived U.S. citizenship upon his mother's naturalization because he was over the age of 18 years when she naturalized.

On appeal, the applicant, through counsel, maintains that the applicant's father had the required residence in the United States to transmit U.S. citizenship to the applicant. *See* Appeal Brief. The applicant further states that the director erred in finding that he was over the age of 18 years when his mother naturalized. *Id.* The applicant maintains that he is eligible for a certificate of citizenship under former section 321 or 322 of the Act. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established his eligibility for a certificate of citizenship for the reasons discussed below and his appeal will therefore be dismissed.

The AAO notes that "[t]he 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) (citations omitted). The applicant was born in 1944. Section 201 of the Nationality Act is therefore applicable to this case.¹

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

A person born outside of the United States and its outlying possessions of parents one of

¹ Although the director erroneously considered the applicant's citizenship claim under section 301 of the Act, the error was harmless because the evidentiary requirements of section 301 of the Act and section 201 of the Nationality Act are sufficiently similar as applied to this case. The AAO notes that the applicant has previously indicated that there is no additional evidence of his father's residence in the United States available. *See* Response to Form N-14. Therefore, a remand to the director for consideration of this matter under the applicable law is not required.

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.

The applicant must thus establish that his father resided in the United States for ten years prior to August 26, 1944, five of which were after April 18, 1930 (his sixteenth birthday). The record in this case includes, in relevant part, the applicant's birth certificate, the applicant's father's birth certificate, the applicant's parents' marriage certificate, and affidavits executed by two family friends, one of whom claims to be the applicant's distant cousin. The record also contains a copy of the applicant's mother's naturalization certificate and immigration documents, the applicant's lawful permanent resident card, and evidence of the applicant's service in the U.S. Army and his presence in the United States.

The evidence indicates that applicant's father was born in 1914. He was married to the applicant's mother in Poland in 1937. The applicant was born in 1944 in Poland. His mother immigrated to the United States in 1949. The applicant obtained lawful permanent residency in 2009. According to the affidavits submitted, the applicant's father's family shared a home with his cousins in Indiana from birth until 1937. The brief statements in the affidavits submitted are not sufficient to establish that the applicant's father resided in the United States from 1914 until 1937, as claimed. The affiants, the applicant's father's cousin and his spouse, were born in 1922 and 1923, respectively. Their personal knowledge of the applicant's father's residence is based on observations during their early childhood and teenage years. Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. The affidavits submitted, which are nearly identical, suggest that the applicant's father was present in the United States for some time after his birth and before his departure to Poland but do not establish that he was residing in the United States for ten years prior to the applicant's birth.

The AAO finds that the applicant has failed to establish that his father resided in the United States for ten years prior to 1944, including five years after his sixteenth birthday in 1930. Therefore, the applicant cannot establish that he acquired U.S. citizenship at birth through his father.²

² The AAO further notes that the applicant did not derive U.S. citizenship upon his mother's naturalization in 1960 because he was not a lawful permanent resident of the United States at that time. Moreover, the applicable derivative citizenship provisions of the Act require the "naturalization" of the applicant's parents, and the applicant's father is a native-born U.S. citizen. Lastly, former section 322 of the Act requires the

“There 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 applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed. This decision is rendered without prejudice to the filing of a naturalization application should the applicant meet the other requirements for naturalization.

ORDER: The appeal is dismissed.

approval of an application and administration of the Oath of Allegiance prior to an applicant's eighteenth birthday.