

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  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



E2

Date: **AUG 20 2012**

Office: YAKIMA, WA

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1949).

ON BEHALF OF APPLICANT:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Yakima, Washington, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 21, 1949 in Romania. The applicant claims that his father, [REDACTED], was born in the United States on May 28, 1919. The applicant's parents were married in Romania in 1946. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he had not established that his father resided in the United States as is statutorily required. The director further noted that the applicant entered the United States in 1985 at the age of 36, and therefore did not satisfy the applicable requirements for retention of U.S. citizenship.

On appeal, the applicant, through counsel, states that he provided sufficient evidence of his father's residence. Although counsel indicated on the Form I-290B that he would submit a brief or additional evidence to the AAO within 30 days, or by June 7, 2012, no additional evidence has been received into the record. The record is, therefore, considered complete.

The AAO reviews these proceedings *de novo*. 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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1949. Section 201(g) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

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

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.

In order to acquire U.S. citizenship at birth under this section, the applicant must therefore establish that his father resided in the United States for 10 years prior to 1949, five of which were after the age of 16 (after 1935).

The applicant maintains that his father resided in the United States from birth until 1945 and submits sworn statements of [REDACTED] the applicant's wife and [REDACTED] to support his claim. Neither [REDACTED] has personal knowledge of the applicant's father's residence in the United States. Ms. [REDACTED] met the applicant in 1970, and Ms. [REDACTED] in 1983. There is no objective, detailed corroborating evidence in support of the applicant's

claim. Therefore, the applicant cannot establish that his father resided in the United States for 10 years prior to 1949, five of which were after 1939.

In any event, the applicant did not fulfill the applicable retention requirements and therefore cannot establish eligibility for a certificate of citizenship. The applicant entered the United States at the age of 36. Section 301(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(b), states that a child who acquired citizenship at birth abroad . . . must be continuously physically present in the United States for a period of five years between the ages of fourteen and twenty eight in order to retain his or her U.S. citizenship. A two-year retention requirement was later substituted retroactively in 1972. *See 7 Foreign Affairs Manual (FAM) § 1133.5-7.*<sup>1</sup> The applicant was not physically present in the United States until 1985, when he was already 36 years old. He therefore cannot establish that he fulfilled the retention requirement applicable to his case.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet his burden of proof. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> Section 301(c) of the Act, 8 U.S.C. § 1401(c), “applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did not later comply with, the retention requirements of section 201(g) or (h) of the Nationality Act.” *See 7 FAM 1133.5-2(c)*. Public Law 95-432, effective October 10, 1978, subsequently repealed section 301(b) of the Act, and eliminated completely, the physical presence requirement for retention of U.S. citizenship. *See 7 FAM 1133.2-2(d)*. However, the “[c]hange was prospective in nature.” *Id.* *See 7 FAM 1133.5-13(a) and (c)*. The AAO notes that the applicant was 29 years old on October 10, 1978.