



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 24 2013

Office: DENVER, CO

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

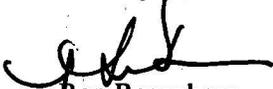
Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1949).

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.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Denver, Colorado, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Canada. The applicant's parents, [REDACTED] and [REDACTED] were also born in Canada. The applicant alleges that his parents acquired U.S. citizenship at birth. The applicant seeks a certificate of citizenship claiming that he also acquired U.S. citizenship at birth through his parents.

The field office director denied the applicant's citizenship claim finding that the applicant had failed to establish that either of his parents were U.S. citizens. *See* Decision of the Field Office Director dated March 5, 2012. The director further noted that the applicant had not established that his parents had the required residence in the United States prior to his birth. *Id.*

On appeal, the applicant, through counsel, states that the director erred in requiring documentary evidence of his parents' U.S. citizenship. *See* Appeal Brief. The applicant claims that his parents acquired U.S. citizenship at birth through their parents and were not subject to retention requirements. *Id.*

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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1949. Section 201(c) of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601(c), is therefore applicable to his citizenship claim.¹

At the outset, however, the AAO must determine whether the applicant's parents were U.S. citizens at the time of the applicant's birth. The applicant's parents were born in 1927 and 1924, respectively. The Act of 1855, which was incorporated into the Revised Statutes as section 1993, is therefore applicable to their citizenship determination. The Revised Statutes, as in effect at the time of the applicant's parents' births, provided for U.S. citizenship for children born abroad to U.S. citizen fathers. In 1994, section 301(h) of the Act, 8 U.S.C. § 1407, was enacted to allow for acquisition of U.S. citizenship by persons born prior to 1934 through a U.S. citizen mother as well. In either case, residence in the United States by the parent prior to the child's birth was a requirement for acquisition of U.S. citizenship. Section 301(h) of the Act further provides that retention requirements are inapplicable in these circumstances.

¹ Section 201(c) of the Nationality Act stated, in pertinent part, that:

A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions prior to the birth of such person.

The record contains, in relevant part, a copy of the applicant's birth certificate and expired U.S. passport,² a copy of his parents' marriage certificate, a copy of his parents' birth certificates and his maternal grandparents' delayed birth certificates; evidence of his paternal grandparents' births and residences in the United States, and evidence of his maternal grandparents' residences in the United States in 1929.

The AAO finds that the evidence in the record sufficiently establishes that the applicant's parents acquired U.S. citizenship at birth, and that his mother resided in the United States prior to his birth such that the applicant acquired U.S. citizenship at birth as well. The record contains, for instance, the birth certificates of the applicant's maternal grandparents indicating that they were born in the United States. The record also contains evidence that the applicant's maternal grandparents resided in the United States in 1929, prior to the applicant's birth. With respect to the applicant's paternal grandparents, the record also indicates that they were born in the United States and resided here for some time prior to the applicant's father's birth. The applicant's maternal grandparents' birth certificates provide sufficient evidence of their residence in the United States prior to the applicant's mother's birth (in 1927).

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 has met his burden of proof and the appeal will be sustained. The matter will be returned to the Denver Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Denver Field Office for issuance of a certificate of citizenship.

² In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a valid U.S. passport is conclusive proof of U.S. citizenship. As noted, however, the applicant's U.S. passport is expired.