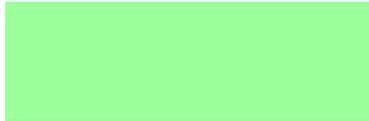


(b)(6)

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

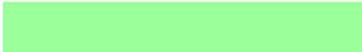


U.S. Citizenship
and Immigration
Services



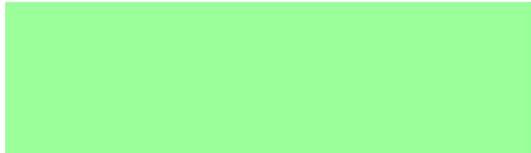
DATE: **AUG 06 2013** OFFICE: YAKIMA, WA

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Yakima, Washington (the director), and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be granted. The underlying application will remain denied.

The applicant was born in Canada on August 15, 1958, to married parents. The applicant's father was born in Canada on December 25, 1932. The applicant's mother was born in Canada on December 30, 1938, and she passed away on April 1, 2009. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(3) (former Act), based on the claim that his parents were U.S. citizens when he was born, and that he acquired U.S. citizenship at birth through his parents.

The director determined in a decision dated September 27, 2012, that the applicant had failed to establish that either of his parents were U.S. citizens, or that the applicant acquired U.S. citizenship at birth through a U.S. citizen parent. In a decision dated May 20, 2013, the AAO agreed that the applicant had failed to establish that his mother was a U.S. citizen. The AAO determined further that, although the applicant established that his father had acquired U.S. citizenship at birth, the applicant nevertheless failed to establish that his father satisfied U.S. physical presence requirements for acquisition of citizenship under section 301(a)(7) of the former Act; 8 U.S.C. § 1401(a)(7). The appeal was dismissed accordingly.

Counsel asserts on motion, that evidence establishes that the applicant's mother acquired U.S. citizenship at birth under section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934 and subsequent amendments. Specifically, counsel asserts that the applicant was born when his mother was 19 years old, and that, although the applicant's mother subsequently failed to meet U.S. residence requirements for retention of her citizenship, the applicant's mother had not been divested of her U.S. citizenship when the applicant was born. The applicant therefore had two U.S. citizen parents at the time of his birth. Counsel asserts that evidence also establishes that the applicant's father resided in the United States prior to the applicant's birth. The applicant therefore meets the requirements for citizenship as set forth in section 301(a)(3) of the former Act. In support of his assertions, counsel refers to the Supreme Court decision, *Lee You Fee v. Dulles*, 355 U.S. 61 (1957). Counsel also refers to an Attorney General opinion and to U.S. Department of State Foreign Affairs Manual (FAM) provisions. The entire record was reviewed and considered in rendering a decision on the motion.

Section 1993 of the Revised Statutes, as originally enacted, applies to children born abroad to U.S. citizens prior to May 24, 1934, and states that:

All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, applies to children born abroad to a U.S. citizen between May 24, 1934 and January 13, 1941. The amendment made by the Act of May 24, 1934, did not change the original requirements set forth in section 1993 of the Revised Statutes. The Act of May 24, 1934 did, however, amend section 1993 of the Revised Statutes to include a requirement that the child of a U.S. citizen must reside in the United States for five years prior to reaching the age of eighteen, and must take an oath of allegiance within six months of his or her twenty-first birthday, in order to acquire U.S. citizenship (retention of citizenship requirements.)¹

The applicant's mother was born abroad on December 30, 1938, to a U.S. citizen mother and a Canadian father. Section 1993 of the Revised Statutes, as amended therefore applies to her citizenship claim.

Citing to the Attorney General opinion, 38 *Opinion Attorney General* 10 (1934), the Board of Immigration Appeals clarifies, in pertinent part, in *Matter of L-M & C-Y-C*, 4 I & N Dec. 617, 618 (BIA 1952) that:

Under the provisions of section 1993 of the Revised Statutes as amended by the Act of May 24, 1934 (48 Stat. 797; 8 U. S. C. 6), a child born out of the United States, one of whose parents was an alien, the other a citizen who had resided in the United States prior to the child's birth, was declared to be a citizen of the United States, but the right of citizenship did not descend unless the child came to the United States and resided therein for at least 5 years continuously immediately previous to his 18th birthday, and unless, within 6 months after the child's 21st birthday, he took an oath of allegiance to the United States. *It has been held that under this provision such a child acquires United States citizenship at birth, and that such citizenship is subject to being divested if the child thereafter fails to comply with the two conditions prescribed in section 1 of the Act of May 24, 1934, which are to be regarded as conditions subsequent and not as conditions precedent* (38 *Opinion Attorney General* 10 (1934)).

(Emphasis added). The Board states at 621:

As previously indicated (38 *Op. A. G.* 10), under the provisions of 1993 Revised Statutes as amended by the Act of May 24, 1934, the child born abroad of parents one

¹ U.S. laws passed subsequent to the passage of the Act of May 24, 1934, retroactively liberalized the Act of May 24, 1934, retention of citizenship requirements. The Act of 1940 retroactively liberalized the child retention requirements to state that a child must reside in the U.S. or its outlying possessions for five years between the ages of thirteen and twenty-one. See section 201(g) of the Act of 1940. The Immigration and Nationality Act of June 27, 1952, Pub. L. 82-414, 66 Stat. 163 (the former Act), retroactively liberalized retention requirements to allow a child to meet the requirements if she or he was continuously physically present in the United States or its outlying possession for five years between the ages of fourteen and twenty-eight. See section 301(c) of the former Act. See also, *Matter of Navarrete*, 12 I&N Dec. 138, 139-40 (BIA 1967).

of whom is a citizen of the United States and has previously resided in the United States and the other an alien, acquires United States citizenship at birth. This conclusion is equally applicable to section 201 (g) of the Nationality Act of 1940. *Such citizenship is subject to being divested if the retention conditions are not complied with, and these conditions are regarded as conditions subsequent and not as conditions precedent.*

Id. at 621. (Emphasis added).

The Board determined in *Matter of C*, 8 I&N Dec. 511, 512 (BIA 1959), that an individual who acquired U.S. citizenship at birth under section 1993 of the Revised Statutes, as amended, and who obtained dual U.S. and Italian citizenship at the age of two, based upon his father's repatriation in Italy, "had to return to the United States before attaining the age of 23 or lose his United States citizenship acquired at birth."

In addition, referring to the decision, *Lee You Fee v. Dulles*, 236 F. 2d 885 (1956) (reversed November 18, 1957, 355 U.S. 61), the Regional Commission determined in *Matter of M*, that an individual who acquired U.S. citizenship at birth in 1935, pursuant to section 1993 of the Revised Statutes, as amended, was a U.S. citizen until he lost his citizenship due to his failure to comply with section 201 of the Nationality Act of 1940 retention requirements prior to his 16th birthday. The decision reflects further that the individual could regain citizenship by complying with the provisions of section 301 (b) and (c) of the Immigration and Nationality Act. *See Matter of M*, 7 I&N Dec. 646, 648-49 (Regional Commissioner, approved by the Assistant Commissioner, 1958).

The above legal cases demonstrate that individuals who acquired U.S. citizenship at birth under section 1993 of the Revised Statutes, as amended, remained U.S. citizens until the point at which they failed to comply with citizenship retention requirements. In the present matter, the record reflects that the applicant's mother acquired U.S. citizenship at birth under section 1993 of the Revised Statutes, as amended. The applicant was born in August 1958, when his mother was 19 years old. The applicant was thus born prior to the date that retention requirements needed to be met in his mother's case. Accordingly, the applicant's mother was still a U.S. citizen at the time of the applicant's birth.

Section 301(a)(3) of the former Act, 8 U.S.C. § 1401(a)(3) (now section 301(c) of the Act, 8 U.S.C. § 1401(c)) provided that:

The following shall be nationals and citizens of the United States at birth: ... a person born outside of the United States ... of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person[.]

Initially defined by section 104 of the Nationality Act of 1940, as "the place of general abode," the definition of residence was expanded upon by the former Act, and current section 101(a)(33) of the Act, 8 U.S.C. § 1101(c), which defines "residence" as:

[T]he place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

See also, Savorgnan v. United States, 338 U.S. 491, 505 (1950), (in which the Supreme Court interpreted “residence” as the principal dwelling place of a person without regard to intent). To satisfy the residence requirement of section 301(a)(3) of the former Act, the applicant must therefore establish that any time spent by his parents in the United States prior to his birth consisted of more than a temporary residence, and that, rather, the United States was the principal place of dwelling.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The “preponderance of the evidence” standard requires that the record demonstrate that the applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even *where* some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is “more likely than not” or “probably” true. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)).

To establish that his mother or father resided in the United States prior to his birth on August 15, 1958, the applicant submits a July 13, 2011 affidavit from his father, stating that he and the applicant’s mother lived in California for about 3 weeks in 1957. The applicant also submits a June 29, 2012 affidavit from his mother’s friend, stating that she recalls conversations in which the applicant’s mother said that she spent time with her grandmother in Oregon as a child, and that she lived in California during the summer of 1951 and the fall of 1957.

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that his mother or father resided in the United States prior to his birth. The record lacks corroborative evidence to support the claim that the applicant’s mother lived in the United States with her grandmother as a child, or in 1951 and 1957, and the affiant has no personal knowledge of these claimed events. The claim that the applicant’s mother and father lived together in California for three weeks in 1957 also lacks corroborative evidence. The claim is also vague and lacks material details. Moreover, even if the claim is true, it fails to establish that the applicant’s parent’s principal place of dwelling was California during that time, or that the three week stay was more than a temporary residence.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in this case. Accordingly, the Form N-600 application remains denied.

ORDER: The motion to reconsider is granted. The AAO’S prior decision, dated May 20, 2013, is affirmed. The underlying application remains denied.