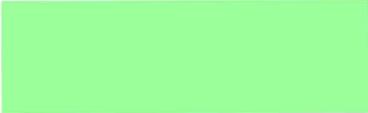


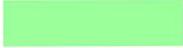


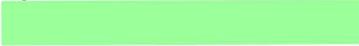
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 20 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 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,

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Canada on August 15, 1958. His 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 based on the claim that both of his parents were U.S. citizens, and that he acquired U.S. citizenship at birth through his parents.

In a decision dated September 27, 2012, the director determined that the applicant failed to establish that either of his parents were U.S. citizens, or that he acquired U.S. citizenship at birth through a U.S. citizen parent. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that U.S. passport evidence establishes that his father is a U.S. citizen. Counsel asserts further that the applicant's mother was a U.S. citizen at birth; that although she did not meet residence retention requirements for U.S. citizenship, she was a U.S. citizen until her 21st birthday; and that the applicant was born prior to his mother's 21st birthday and was therefore born to a U.S. citizen. In support of these assertions, counsel submits copies of U.S. passports issued to the applicant's father in 1998 and in 2008. The record also contains Canadian birth certificates for the applicant's parents; the applicant's parent's marriage certificate; U.S. birth certificates for the applicant's maternal and paternal grandmothers; an affidavit from the applicant's father; and a letter from the applicant's mother's friend.

The entire record was reviewed and considered in rendering a decision on the appeal.

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)).

In the present matter, the applicant must first establish that he has a U.S. citizen parent.

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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001).

The record reflects that the applicant's father was born in Canada on December 25, 1932 to a U.S. citizen mother (the applicant's paternal grandmother) and a Canadian father. The applicant indicates that his father's parents were unmarried at the time of his father's birth; however, the record lacks

evidence to corroborate this assertion, as his father's birth certificate indicates his parents' marital status as married. Nevertheless, the applicant's paternal grandmother's marital status at the time of his father's birth does not affect the outcome of the applicant's father's citizenship claim.

Out of wedlock provisions contained in section 205 of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940) (the Act of 1940), in effect at the time of the applicant's father's birth, apply retroactively to persons born before the Act of 1940 was passed, and provide that:

The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out-of-wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

In wedlock provisions contained in section 301(h) of the Act, 8 U.S.C. § 1401(h), established by the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, Title I, 108 Stat. 4305 (October 24, 1994), confer citizenship at birth to a person born abroad before May 24, 1934:

[O]f an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

No specific period of U.S. residence is required under either section 205 of the Act of 1940 or section 301(h) of the Act. *See Matter of V*, 6 I&N Dec. 1, 5. (A.G. 1954). *See also, State ex rel. Phelps v. Jackson*, 79 Vt. 504, 519 (1907). Here, the record contains birth certificate evidence reflecting that the applicant's paternal grandmother was born in New York on January 22, 1911. She therefore satisfied residence requirements under section 205 of the Act of 1940 and section 301(h) of the Act. Accordingly, the applicant established that his father acquired U.S. citizenship at birth through the applicant's paternal grandmother.¹

The applicant's mother was born abroad on December 30, 1938 to a U.S. citizen mother (the applicant's maternal grandmother) and a Canadian father. 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 parent between May 24, 1934 and January 13, 1941.

¹ It is also noted that the applicant's father has been issued two U.S. passports. The Board of Immigration Appeals held in *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984), that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship.

The Act of May 24, 1934, which amended section 1993 of the Revised Statutes, included retention requirements. However, a series of amendments to U.S. citizenship laws liberalized the nature of retention requirements applicable to persons born between May 24, 1934 and January 13, 1941. Based on the evidence, the applicant's mother did not have the required physical presence in the United States to transmit U.S. citizenship to the applicant. Accordingly, the applicant's claim to U.S. citizenship will be analyzed based solely on his father's physical presence in the United States.

Because the applicant was born abroad in 1958, section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) applies to his U.S. citizenship claim.² Under section 301(a)(7) of the former Act the following shall be 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 10 years, at least 5 of which were after attaining the age of 14 years.

To establish that his father was physically present in the United States for the requisite period set forth in section 301(a)(7) of the former Act, 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. This evidence fails to demonstrate that the applicant's father was physically present in the United States for 10 years prior to the applicant's birth on August 15, 1958, at least 5 years of which were after his father turned 14 on December 25, 1946.

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 establish by a preponderance of the evidence that his father was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.