



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 15 2015**

Office: WASHINGTON, DC

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application Certificate of Citizenship under Section 1993 of the Revised Statutes of the United States, 1878, as amended by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797.

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, DC denied the Application for Certificate of Citizenship (Form N-600) 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 [REDACTED] in the Philippines. The applicant's mother, [REDACTED] was born in the Philippines on [REDACTED]. The applicant seeks a certificate of citizenship pursuant to section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797 (Section 1993 of the Revised Statutes, as amended), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen mother.

In a decision, dated June 17, 2013, the field office director found that the applicant had failed to show that his mother had the required physical presence in the United States prior to his birth. The field office director indicated that the applicant's mother's presence in the Philippines, an outlying possession of the United States, prior to the applicant's birth would not meet the physical presence requirement because the law at the time of the applicant's birth did not recognize residence in an outlying possession of the United States as residence in the United States. The application was denied accordingly.

On appeal, counsel asserts that the applicant's mother met the residency requirement contained in section 1993 of the amended Revised Statute because she resided in the Philippines when it was a U.S. territory, prior to the applicant's birth. In support of this assertion, counsel cites the Board of Immigration Appeals cases, *Matter of F-*, 1 I&N Dec. 287 (BIA 1942); *Matter of Y-*, 7 I&N Dec. 667 (BIA 1958), and *Matter of V-*, 9 I&N Dec. 558 (BIA 1962), which held that for section 201(g) of the Nationality Act, 8 U.S.C. § 601(g), and section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) purposes, residence in the Philippine Islands while it was a U.S. territory constituted residence in an outlying possession of the United States. Counsel states because residence in the Philippines while it was a territory of the United States would meet the residency requirements for transmission of citizenship according to the laws enacted in 1940 and 1952, there is no reason for the residency requirement not to be interpreted in the same manner for the law enacted in 1934.

"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, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in the Philippines on September 23, 1940. Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, therefore applies to his transmission of citizenship claim.

Section 1993 of the Revised Statutes 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, did not change the original requirements set forth above, but conferred U.S. citizenship to children born to a U.S. citizen parent abroad regardless of the parent's gender. The Act of May 24, 1934 also amended section 1993 of the Revised Statutes to include the requirement that a 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. U.S. laws passed subsequent to the passage of the Act of May 24, 1934, retroactively liberalized the child retention of citizenship requirements mentioned above, requiring that an applicant reside in the United States or one of its outlying possessions for five years between the ages of 13 and 21, or, have five years of continuous physical presence in the United States between the ages of 14 and 28. Section 301(b) of the Act stated that a child who acquired citizenship at birth abroad pursuant to section 301(a)(7) of the Act 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. 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). A two-year retention requirement was later substituted retroactively in 1972. See 7 FAM 1133.5-7. 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 record fails to indicate that the applicant's U.S. citizen mother resided in the United States. It also fails to show that the applicant would meet the retention requirements for citizenship if his mother did reside in the United States.

The burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). 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. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

The applicant asserts that his mother satisfied the U.S. residence requirement contained in section 1993 of the amended Revised Statute because she resided in the Philippines when it was a U.S. territory.

The evidence contained in the record reflects that the applicant's mother resided in the Philippines prior to the applicant's birth. The Philippine Islands were a U.S. territory between 1899 and 1946. See Act of July 1, 1902, 32 Stat. 692, as amended. The applicant therefore established that his mother resided in a U.S. territory or outlying possession prior to the applicant's birth.

However, where section 201(g) of the Nationality Act and section 301(a)(7) of the former Act contain provisions that explicitly allow for acquisition of U.S. citizenship where the U.S. citizen parent either resided in the U.S. or a U.S. outlying possession for a specified period of time, section 1993 of the Revised Statutes, as originally enacted, and as amended, does not contain a "residence in U.S. outlying possession" provision for transmission of citizenship purposes. Furthermore, *Friend v. Reno*, 172 F.3d 638, 648 (9th Cir. 1999), held that the definition of "United States" for section 1993 Revised Statutes purposes did not include an outlying possession such as the Philippines. In addition, *Friend v. Reno* held that, "[r]esidence in the Philippines during its territorial period does not qualify as residence "in the United States" under Rev. Stat. § 1993." *Id.* Accordingly, the applicant has failed to establish that his mother resided in the United States prior to his birth under section 1993 of the Revised Statutes.

Finally, the applicant indicates that he did not enter the United States until the age of 40. Because the Philippine Islands were no longer an outlying possession of the United States during the required residency period under the law applicable to the applicant, he does not meet the retention requirements of transmission of citizenship.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his mother resided in the United States for the requisite period and that the applicant retained the claimed citizenship. Accordingly, the applicant is not eligible for citizenship under section 201(g) of the 1940 Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.