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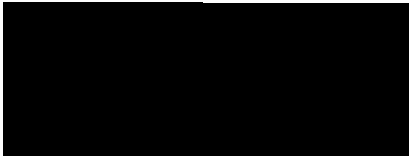
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
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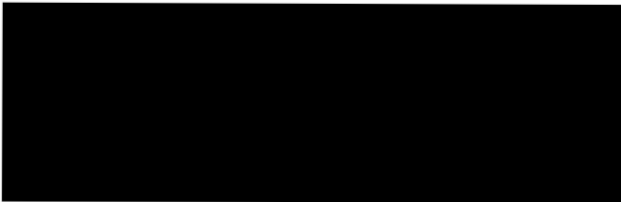


FILE: [REDACTED] Office: ANCHORAGE Date: SEP 22 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 201(c) of the Nationality Act of 1940; 8 U.S.C. § 601(c).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Anchorage, Alaska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on June 13, 1952 in Canada. The applicants' parents are [REDACTED]. The applicant's parents were born in Canada. The applicant's grandmothers were both born in the United States. The applicant's parents were married in 1951, in Canada. They were divorced in 1966. The applicant presently seeks a certificate of citizenship under section 201(c) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(c), based on the claim that he acquired U.S. citizenship at birth through his parents.

The district director determined the applicant had failed to establish that his father acquired U.S. citizenship at birth. Specifically, the director noted that the applicant had failed to submit his paternal grandmother's birth record. The application was denied accordingly.

On appeal, the applicant, through counsel, states that the director erred in requiring him to provide a birth certificate claiming that such is unavailable and that alternative documentation has been provided to establish his paternal grandmother's birth in the United States.

"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 Nationality Act of 1940 was in effect at the time of the applicant's birth. The statutory provisions set forth in section 201(c) of the Nationality Act therefore apply to the applicant's citizenship claim.

Section 201 of the Nationality Act states that:

The following shall be nationals and citizens of the United States at birth: (c) 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....

In the present matter, the applicant must therefore establish that his parents were U.S. citizens in 1952, and that one of them resided in the United States prior to 1952.

The applicant's father was born in Canada on September 29, 1928 to [REDACTED]. Florence Stafford was born in the United States in 1903. [REDACTED] was not a U.S. citizen. The applicant's mother was born in Canada on August 12, 1930 to [REDACTED] was born in the United States on November 6, 1912. [REDACTED] was not a U.S. citizen. The applicant's parents were married in 1951, and divorced in 1966. The applicant's mother was admitted to the United States as a lawful permanent resident in 1968, and became a U.S. citizen upon her naturalization in 1987.

The AAO must first determine whether the applicant's parents acquired U.S. citizenship at birth. The AAO notes that section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934

(R.S. section 1933) is applicable in determining whether U.S. citizenship was transmitted at birth to individuals, like the applicant's parents, born prior to 1934.

R.S. section 1993 provided that a child:

[B]orn out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

The applicant must therefore establish that his maternal grandmothers were U.S. citizens in 1928 and 1930, respectively, and that they had (prior to his parents' births) resided in the United States. The AAO notes that the Act of September 22, 1922, Pub. L. 67-346, 42 Stat. 1021, which was in effect until 1931, provided for the expatriation of women who married non-citizens ineligible for citizenship. There is no indication in the record that the applicant's grandfathers were ineligible for citizenship, that his grandmothers renounced their citizenship or otherwise expatriated or intended to expatriate. The AAO notes further that section 101(a)(2) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, Title I, 108 Stat. 4305 (Oct 25, 1994), specifically provided, retroactively to the person's date of birth, that a person born abroad prior to May 24, 1934 to an alien father and a U.S. citizen mother who had resided in the United States is a U.S. citizen.

The AAO finds that the applicant has met his burden to establish, by a preponderance of the evidence, that both his grandmothers were native-born U.S. citizens, who resided in the United States prior to the applicant's parents' births. The AAO finds that the applicant has provided sufficient documentary evidence verifying his paternal grandmother's U.S. birth in view of the unavailability of pre-1907 birth records in Washington State. The AAO concludes that the applicant himself acquired U.S. citizenship at birth, having been born to U.S. citizen parents one of whom resided in the United States prior to his date of birth.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met his burden, and the appeal will therefore be sustained.¹

ORDER: The appeal is sustained.

¹ The AAO notes that the applicant has submitted a copy of his U.S. passport. It is well-established that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984).