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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: Buffalo Date: FEB 27 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 14, 1990, in Yemen. The applicant's father was born in Yemen in December 1950 and became a naturalized U.S. citizen on March 18, 1976. The applicant's father died on June 19, 1998. The applicant's mother was born in January 1954 in Yemen and never had a claim to U.S. citizenship. The applicant's parents married each other on November 20, 1973. The applicant was lawfully admitted for permanent residence on September 23, 2000. The applicant claims that she acquired United States citizenship at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The district director determined that the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 5 years, at least 2 of which were after age 14, as required under section 301(g) of the Act, 8 U.S.C. § 1401(g), at the time of the applicant's birth.

On appeal, counsel submits a summary of FICA earnings which shows that the father commenced employment in the United States in 1969. Counsel states that the father had satisfied whatever residence requirements were required to become a naturalized U.S. citizen in 1979. Counsel indicates that the wages earned may not seem substantial but they were more than three times the poverty level at the time.

Section 301 of the Act, effective for persons born on or after November 14, 1986, provides in part, that the following shall be nationals and citizens of the United States at birth:

> (g) a person born outside the geographical limits of the United States and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age 14 years...

Section 316 of the Act, 8 U.S.C. § 1427, requires a person seeking naturalization to establish that he or she has resided continuously in the United States after being lawfully admitted for permanent residence for at least five years and during the five years immediately preceding the date of filing the application has been physically present therein for periods totaling at least half of that time.

In becoming a naturalized U.S. citizen, the father had to establish a physical presence of at least two and one-half years in the

United States prior to 1979. The record shows that the father earned $12,000 or more in 1988, 1989, 1992 and 1996. He also earned more than $8,000 in 1993 and in 1995. The father's earnings and the supporting affidavit indicate that the father was physically present at least 5 years by the time the applicant was born in 1990. It is also noted that the father's Service file, A18 723 589, is not present for review in this proceeding.

After reviewing the record, it is concluded that the applicant has established that her father was physically present in the United States for at least 5 years prior to the applicant's birth. Therefore, the applicant acquired United States citizenship at birth.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has met this burden of establishing that her father had been physically present in the United States a total of 5 years, 2 of which were after the age of 14. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.