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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



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

FILE# [REDACTED] Office: Denver

Date: **FEB 28 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]

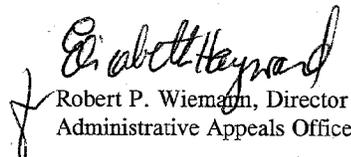
INSTRUCTIONS:

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. Wieman, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 11, 1964, in Guyana. The applicant's father, [REDACTED] was born in Guyana in May 1925 and acquired U.S. citizenship at birth through his parents. [REDACTED] died in March 1983. The applicant's mother, [REDACTED] was born in 1934 in Guyana and never had a claim to United States citizenship. The applicant's parents married each other on December 12, 1959. The applicant claims that he 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 applicant provided evidence that his father served in the United States Army from May 13, 1944 to March 23, 1946. The applicant alleges that, instead of returning to the family home in Guyana, his father went to South Dakota to work on ranches and he returned to Guyana in 1954 where he lived for the rest of his life.

The acting district director determined 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 10 years, at least 5 of which were after age 14, as required under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), at the time of the applicant's birth.

On appeal, counsel refers to the documentation already contained in the record and asserts that such evidence is sufficient to establish that [REDACTED] had resided in the United States for the required amount of time.

In *Montana v. Kennedy*, 278 F.2d 68, affd. 366 U.S. 308 (1961), it was held that to determine whether a person acquired U.S. citizenship at birth abroad, one must resort to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that 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 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The record contains evidence that [REDACTED] applied for a social security card in 1948 and established a work record in 1952 and 1953 for the Homestake Mining Company. This is the only supporting documentary evidence that [REDACTED] was physically present in the United States between 1944 and 1954 besides his military record.

The record contains three nearly identical affidavits from [REDACTED] [REDACTED] sister and two cousins all sworn to in March 2002 regarding the location of [REDACTED] between 1944 and 1954. The affidavits from close relatives and unsupported by corroborating evidence do not establish the required physical presence by a preponderance of the evidence.

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.

The applicant has not met the burden of establishing his father had been physically present in the United States for a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.