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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Houston Date: SEP 17 2001

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 which 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 which 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 15, 1982, in Argentina. She alleges to be the daughter of [redacted] a native of Argentina who became a naturalized U.S. citizen in April 1998, and [redacted], a native of Spain who became a naturalized U.S. citizen in April 1998. [redacted] and [redacted] married each other in March 1969. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director denied the application on the ground that the applicant had failed to establish that a bona fide parent/child relationship ever existed, and she is not residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized.

On appeal, counsel states that [redacted] submitted the applicant's birth certificate, an affidavit from Maria Del Matti, a copy of the applicant's passport, book of births from the Civil Register in Argentina, and Maria's affidavit.

Section 321 of the Act was repealed on February 27, 2001. An applicant who was over the age of 18 on that date is ineligible to obtain the new benefits of the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The CCA provides benefits only to those persons who had not yet reached their 18th birthday as of February 27, 2001.

Section 321(a) of the Act in effect prior to February 27, 2001, provided, in part, that:

> A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

> (4) Such naturalization takes place while said child is under the age of 18 years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, the interested agencies have agreed on what we believe to be a more judicious interpretation of section 321(a). We now hold that, as long as all the conditions specified in section 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The applicant appears to have been admitted to the United States on September 12, 1996.

The district director's decision was based on documentation in the record, including a June 1982 memorandum from the American Embassy in Buenos Aires which reflects that [redacted] applied for a nonimmigrant visitor's visa for the applicant following the child's birth. That visa application was refused because [redacted] failed to satisfy the consular officer that she was the natural mother of the applicant. [redacted] refused to undergo a medical examination at that time. The consular officer also notified the Service offices in Los Angeles, San Francisco and Miami that, should a petition for alien relative be received at the Embassy, it would be returned to the Service office as unapprovable.

In spite of that notice a petition for alien relative was filed by [redacted] in behalf of the applicant at the Service office in Los Angeles on February 8, 1983, and it was approved on March 30, 1983. The approved visa petition was received at the American Embassy in Buenos Aires on April 23 1983. On August 11, 1983, that approved visa petition was returned to the Service office in Los Angeles with an explanatory memorandum. The Los Angeles Service office notified [redacted] to appear for interview on February 2, 1984, and on June 20, 1984, with a statement from the attending physician on hospital stationery and fact regarding the applicant's birth. The latter request was based on [redacted] statement to a consular officer in June 1982 that she was being treated for infertility by a physician at the Kaiser Foundation in Bellflower, California. [redacted] failed to appear for either appointment.

Now, approximately 15 years later, the applicant has notified the Service that such documentation is unobtainable because the hospital is no longer operating and that the attending physician is now deceased.

On appeal, counsel submits an uncertified copy of the applicant's birth certificate registered on December 26, 1984, nearly three years after the applicant's birth in January 1982 and after [redacted] failed to provide evidence from a physician regarding the applicant's birth on three occasions before the applicant's birth had ever been registered.

Although this Service is not bound by a decision made by a consular officer abroad when the Service deciding a matter within its own jurisdiction in the United States, great weight must be accorded to such a decision, especially when the decision was made at a time when all available evidence could have been easily obtained by [redacted] because she was present in Argentina. However, [redacted] refused to comply with the consular officer's request. She also failed to appear for two interviews at a Service office in 1984 to substantiate her claim. Now, 15 years or more later, a claim of unavailability or non-existence of evidence does not carry the same weight as it would have shortly after the applicant's 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.

In Matter of Lemhammad, 20 I&N Dec. 316 (BIA 1991), the Board of Immigration Appeals (the Board) stated that a preponderance of evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not."

In this specific case, the applicant has not established by a preponderance of the evidence that she is the natural daughter of [redacted]. The delayed documentation submitted on appeal only contradicts other evidence in the record and fails to overcome the statements that [redacted] had been residing in Argentina from September 16, 1980, to July 17, 1981, when she returned to the United States to rejoin her husband. [redacted] stated that her husband had not visited Argentina since 1978. Therefore, she either was already pregnant when she returned to the United States in July 1981 after a 10 month separation from her husband and should have given birth in the United States, or she became pregnant between July 17 and August 13, 1981, while in the United States and she should have given birth in May 1982 rather than January 1982.

Although privileged information, [redacted] has not commented further on her treatment for infertility by a Kaiser physician or why she waited nearly three years to register the applicant's birth, especially when she was present in Argentina for at least five to six months beyond the applicant's birth date.

ORDER: The appeal is dismissed.