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U.S. Citizenship
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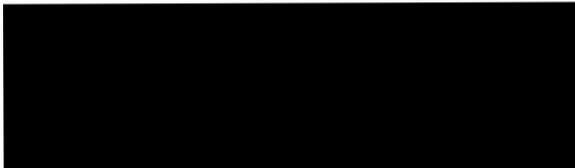
FILE: OFFICE: SAN FRANCISCO, CA DATE: **AUG 01 2008**

IN RE: APPLICANT:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 309 of the former Immigration and Nationality Act; 8 U.S.C. § 1409.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form N-600 will be denied.

The applicant was born in the Philippines on February 25, 1959. The applicant claims that her father, [REDACTED] was born in Connecticut on August 24, 1896, and that he was a U.S. citizen. The applicant's mother was born in the Philippines and she is not a U.S. citizen. The applicant does not claim that her parents were legally married. The applicant seeks a certificate of citizenship pursuant to section 309(a) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1409(a), based on the claim that she acquired U.S. citizenship at birth through her father.

The district director determined that the applicant failed to establish her identity, or that [REDACTED] was her father. The district director determined further that even if [REDACTED] were her father, the applicant had failed to establish that she was legitimated by [REDACTED] under Philippine or Connecticut State law. The Form N-600 was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence in the record establishes her identity and that [REDACTED] is her father. She asserts that evidence also establishes she was legitimated by [REDACTED] under Connecticut State law (where [REDACTED] lived prior to moving to the Philippines) and under California State law (where she claims [REDACTED] was previously domiciled, and where the applicant has resided for over twelve years.) The applicant additionally asserts that her father meets the requirement set forth in section 301(a)(7) of the former Act, 8 U.S.C. § 1407(a)(7). The applicant concludes that she is therefore entitled to U.S. citizenship through her father pursuant to section 309(a) of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The district director indicated in the Form N-600 denial that the applicant's credibility and document submissions were questionable in that she had submitted fraudulent marriage and spousal death documents in connection with a nonimmigrant visa application and alien relative petition. The AAO notes that the record does contain information establishing that an investigation was conducted in the applicant's case, and that fraudulent document findings were made regarding the applicant's claimed marriage to a [REDACTED] and regarding his claimed death. The AAO notes, however, that outside of the concerns raised in the district director's Form N-600 decision, the AAO found no evidence in the record to indicate or establish that the applicant's birth certificate or paternity-related documents were investigated or found to be fraudulent. Absent formal fraud findings or further evidence of fraud, the AAO will consider the applicant's birth certificate and the documents pertaining to [REDACTED] paternity over the applicant to be valid documents for purposes of the present decision.

The applicant's birth certificate reflects that she was born in the Philippines on February 25, 1959, to August [REDACTED] (father) and [REDACTED] (mother.) Based on this evidence, the applicant established by a preponderance of the evidence that [REDACTED] is her father. Connecticut State birth

certificate evidence contained in the record reflects that [REDACTED] was born in Connecticut on August 24, 1896. Accordingly, the applicant established that her father was a U.S. citizen at the time of the applicant's birth.

Information contained in the record reflects that the applicant's parents were not legally married. The applicant and counsel concede that the applicant's parents were not legally married, and that the applicant is the illegitimate child of [REDACTED]. The record additionally contains an affidavit of the applicant's illegitimacy, signed by [REDACTED] and the applicant's mother in 1971. Moreover, three U.S. Applications for Registration filed by [REDACTED], as well as Philippine Court documentation relating to [REDACTED] estate and will, reflect that [REDACTED] was legally married to [REDACTED] when he attempted to marry the applicant's mother. The record contains no evidence to indicate that [REDACTED] legally terminated his marriage to [REDACTED]. The AAO therefore finds that the applicant was born out of wedlock for purposes of acquisition of citizenship at birth.

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (Citations omitted).

Prior to November 14, 1986, section 309(a) of the former Act required that in cases involving a child born out of wedlock, paternity be established by legitimation while the child was under twenty-one. Subsequent amendments made to the Act in 1986 provided that a new section 309(a) applied to persons who had not attained eighteen years of age as of the November 14, 1986, date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Amendments provided further that the former section 309(a) applied to any individual who had attained 18 years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See section 13 of the INAA, supra. See also section 8(r) of the Immigration Technical Corrections Act of 1988*, Pub. L. No. 100-525, 102 Stat. 2609.

In the present matter, the applicant was born prior to November 14, 1986, and she was over the age of eighteen on November 14, 1986. The AAO will therefore look to the legitimation requirements as they existed for section 309(a) of the former Act. If legitimation requirements are established, the applicant must next establish that she satisfies the requirements contained in section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7).¹

¹ Section 301(a)(7) of the former Act states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirement of this paragraph.

Section 101(c) of the Act as it is written now, and as it existed in the former Act, states in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 [21] years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.²

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The Board of Immigration Appeals clarified in *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The record contains no evidence to establish that [REDACTED] resided in California at any time in his life. The issue of whether [REDACTED] legitimated the applicant under California law is thus irrelevant to the applicant's present citizenship claim. The record additionally contains no evidence to indicate or establish that subsequent to the applicant's birth, and prior to her twenty-first birthday, the applicant's father was domiciled in, or resided in Connecticut.

Birth certificate, public school records, and U.S. military service evidence contained in the record reflects that [REDACTED] resided in Connecticut from the time of his birth until February 5, 1919. December 27, 1946, July 3, 1952, and August 14, 1953, U.S. Applications for Registration filed and signed by [REDACTED] reflect that he moved to the Philippines in September 1927, and that he resided in the Philippines indefinitely after this date. [REDACTED] was thus domiciled in, and resided in the Philippines from July 1927, prior to the applicant's birth in 1959, until his death in the Philippines on June 19, 1972. The record reflects further that the applicant's domicile and residence was in the Philippines until she entered the United States for the first time in March 1982, at the age of 23.

Because the evidence demonstrates that the applicant and [REDACTED] were domiciled and resided in the Philippines from the time of the applicant's birth until [REDACTED] death, and prior to the applicant's twenty first birthday, the applicant must establish that she was legitimated by [REDACTED] in the Philippines.³

² The applicant falls within a narrow statutory age bracket which allows her to satisfy section 309 legitimation requirements upon showing that she was legitimated prior to the age of twenty-one rather than the age of sixteen. *Miller v. Christopher*, 96 F.3d 1467, 1468 (U.S.App. D.C. 1996).

³ It is noted that the district director analyzed the applicant's claim under Philippine and Connecticut State law. Although not determinative in the present matter, the AAO agrees that the applicant failed to establish that she was legitimated under Connecticut State law, in that Connecticut General Statutes § 45-274(b)(1) requires intermarriage of the parents for legitimation purposes. Connecticut General Statutes §§ 46(b)-172, and 45-274(b) require the court filing

In order to legitimate a child under Philippine law, the parents of the child must marry one another. *See Matter of Blancaflor*, 14 I&N Dec. 427, 428 (BIA 1973) (discussing legitimation requirements set forth in the Civil Code of the Republic of Philippines). The present record reflects that the applicant's parents were not legally married. Accordingly, the applicant was not legitimated under Philippine law.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that she was legitimated by her father, as required by section 309(a) of the former Act. Accordingly, the requirements contained in section 301(a)(7) of the former Act need not be addressed.

Under 8 C.F.R. § 341.2(c) the burden of proof is on the claimant to establish her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed, and the Form N-600 will be denied.

ORDER: The appeal is dismissed. The application is denied.

of an affirmation of paternity or an agreement to support the child. The record contains no evidence of such a filing, and the applicant's parents were not legally married.