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20 Mass. Ave, N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DEC 04 2008

FILE: [REDACTED] Office: LOS ANGELES, CA Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 23, 1974 in Mexico. The applicant's birth certificate lists only her mother, [REDACTED], a Mexican citizen. The applicant claims that her mother and [REDACTED] entered into a common-law marriage in Alabama prior to her birth. [REDACTED] was a U.S. citizen, born on June 1, 1930 in California. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the Act), based on the claim that [REDACTED] is her father, and that she acquired U.S. citizenship at birth through him.

The district director determined that the record did not establish that [REDACTED] was the applicant's natural or biological father. Accordingly, the application for certificate of citizenship was denied.

On appeal, the applicant, through counsel, requests that the director's decision be overturned because she was deprived of a hearing on her application as required by the regulations and that the director is estopped from denying her citizenship claim. *See* Applicant's Appeal Brief. The applicant maintains that [REDACTED] and [REDACTED], her parents, entered into a common-law marriage in Alabama prior to her birth in 1974. According to the applicant, her parents met while her mother was pregnant. She further asserts that they lived together, moving from state to state (including Alabama) and to Mexico until 1979 (when they settled in California). She further claims that her parents were legally married in Tijuana, Mexico, but that their marriage certificate is unavailable.

The AAO first notes that "[t]he 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). The applicant was born on October 23, 1974. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to her citizenship claim.¹

Section 301(a)(7) of the former Act states 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 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 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 requirements of this paragraph.

¹ The AAO notes that Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

The AAO notes that section 301 of the Act applies to children born in-wedlock to a U.S. citizen parent. Section 309 of the Act, in turn, applies to children born out of wedlock.² Thus, the AAO must first determine whether the applicant was born in or out of wedlock.

The applicant claims that her parents entered into a common-law marriage in Alabama prior to her birth. The AAO finds no evidence, other than her, her mother's and [REDACTED]'s declarations, to support this claim. The AAO notes that [REDACTED]'s name does not appear in the applicant's birth certificate. The AAO further notes that the applicant's mother's name in the birth certificate is listed as [REDACTED] and her marital status is listed as single. The AAO therefore cannot find that the applicant's mother and Mr. [REDACTED] held themselves out as a married couple, that they were recognized as such, or that even that they cohabited or intended to marry prior to the applicant's birth.

Additionally, the AAO notes that there is no documentary evidence to suggest that [REDACTED] resided in Alabama as claimed. The Social Security Administration's 1948-1975 Itemized Statement of Earnings pertaining to [REDACTED] does not include any listings for the period after 1971. The AAO notes also that the listings from 1948 through 1971 indicate employment only in California.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The AAO cannot find, on the basis of the evidence currently in the record, that the applicant's mother and [REDACTED] entered into a common-law marriage in Alabama.³ The applicant has therefore failed to establish that she was born in wedlock. The decisions of the Ninth Circuit Court of Appeals in *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000) and *Solis-Espinoza v. Gonzales*, 401 F3d 1090 (9th Cir. 2005) are therefore inapposite because they relate only to children found to have been born in wedlock.

² Section 309(a) of the Act states:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

³ The AAO notes that the applicant does not claim that her mother and [REDACTED] were legally married in Tijuana prior to her birth. In any event, the AAO cannot find that the applicant's mother and [REDACTED] were married in Mexico absent documentary evidence which, if currently unavailable, could be requested from the jurisdiction where the marriage was registered.

The applicant concedes that she is not the natural or biological child of [REDACTED]. Therefore, she also cannot establish eligibility for citizenship under section 309 of the Act. *See Nguyen v. INS*, 533 U.S. 53, 63 (2001) (discussing *inter alia* why a blood relationship must be established between a father and an out-of-wedlock child in order to acquire U.S. citizenship).

The AAO notes that the applicant's Appeal Brief seems to be requesting that U.S. citizenship be granted on the basis of due process or equitable estoppel theories. The AAO is without authority to apply the doctrine of equitable estoppel or to determine a due process claim in this or any other case. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991) (stating that the AAO, like the Board of Immigration Appeals, is "without authority to apply the doctrine of equitable estoppel against the Service [USCIS] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation"). The jurisdiction of the AAO is limited to that authority specifically granted to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. The jurisdiction of the AAO does not include authority to rule on due process or equitable claims.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

8 C.F.R. § 341.2(c) provides that 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 not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.