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U.S. Citizenship
and Immigration
Services

ES

[Redacted]

FILE: [Redacted] Office: NEWARK, NJ

Date: JUN 15 2004

IN RE: Applicant: [Redacted]

APPLICATION: Cancellation of Certificate of Citizenship pursuant to Section 342 of the Immigration and Nationality Act, 8 U.S.C. § 1453.

ON BEHALF OF APPLICANT:

[Redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, cancelled the applicant's Certificate of Citizenship on July 25, 2001. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 20, 1946, in Tacloban City, Philippines. The applicant's father [REDACTED] was born in the United States in 1921, and was a United States (U.S.) citizen. The record reflects that the applicant's mother [REDACTED] was born in Calbayog City, Philippines and was not a U.S. citizen. The applicant was born out of wedlock and her natural parent's never married. She applied for a certificate of citizenship under sections 205 and 201 of the Nationality Act of 1940, based on a claim that she was entitled to derivative citizenship through her U.S. citizen father. The applicant's application was granted by the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) in 1993, and the applicant was issued a certificate of citizenship on December 4, 1993. On October 27, 1999, the District Director issued a Notice of Intent to Terminate the applicant's certificate of citizenship on the ground that it was issued erroneously and contrary to statute. The applicant's certificate of citizenship was subsequently canceled on July 25, 2001, pursuant to section 342 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1453.

On appeal, counsel asserts the District Director failed to demonstrate that the applicant's certificate of citizenship was obtained illegally or fraudulently. Counsel concludes that section 342 of the Act is thus not applicable to the applicant.

"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). Section 205 of the Nationality Act of 1940 applies where a child is born abroad and out of wedlock to a U.S. citizen father and a non-citizen mother between 1941 and 1952.

Section 205 of the Nationality Act of 1940 states in pertinent part that:

The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out-of-wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.¹

The AAO notes that in order to legitimate a child under either Pennsylvania (where the applicant's father resided) or Philippine law, the parents of the child must marry one another. See 7 FAM 1133.4-2, Appendix A (discussing legitimation requirements under Pennsylvania law.) See also, *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).

¹ Section 201 of the Nationality Act of 1940 provides, in pertinent part, that the following shall be nationals and citizens of the U.S. at birth:

(e) A person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person.

In the present case, the record reflects that the applicant's parents never married. The AAO therefore finds that the applicant was not legitimated under Pennsylvania or Philippine law. Accordingly, she does not meet requirements for a certificate of citizenship under section 205 of the Nationality Act of 1940.²

Section 342 of the Act, 8 U.S.C. §1453 states:

The Attorney General [now, Secretary, Homeland Security, "Secretary"] is authorized to cancel any certificate of citizenship, certificate of naturalization, copy of a declaration of intention, or other certificate, document or record heretofore issued or made by the Commissioner or a Deputy Commissioner or hereafter made by the Attorney General [Secretary] if it shall appear to the Attorney General's [Secretary's] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

In *Friend v. Reno*, 172 F.3d 638, 648 (9th Cir., 1999), the Ninth Circuit Court of Appeals stated:

[T]he Supreme Court has stated plainly that when one of the strict prerequisites for Congressionally-conferred citizenship has not been satisfied, a certificate of citizenship has been illegally procured. Administrative regulations state in mandatory language that, "[i]f it shall appear to a district director that a person has illegally or fraudulently obtained or caused to be created a certificate . . . described in section 342 of the Act, a notice shall be served upon the person of intention to cancel the certificate . . ." As a result, once the Attorney General discovered that the certificate of citizenship had been issued in error, she had a duty to institute cancellation proceedings. (Citations omitted).

The Ninth Circuit Court of Appeals noted that, "[a] certificate is illegally procured if it is later determined that an essential finding of fact in the naturalization proceeding was erroneous. This holding is in keeping with the general principle that no alien has the slightest right to naturalization unless all statutory requirements are complied with, and that Congress has the right not to grant a United States citizen the right to transmit citizenship by descent." *Id.* at 646-47. (Citations and quotations omitted).

In the present case, the applicant did not meet legitimation requirements set forth in section 205 of the Nationality Act of 1940. The AAO finds that the applicant was therefore statutorily ineligible for a certificate of citizenship under sections 205 and 201 of the Nationality Act of 1940, and that her certificate of citizenship

² The AAO notes further that the record contains no evidence to indicate that the applicant was born a U.S. national or that she became a U.S. citizen pursuant to pre-Philippine Independence Nationality laws.

was obtained illegally. The cancellation of the applicant's Certificate of Citizenship was therefore proper, and the appeal will be dismissed.³

ORDER: The appeal is dismissed.

³ The AAO notes that CIS does not have jurisdiction to institute denaturalization proceedings against the applicant. Accordingly, the present proceedings have the effect only of canceling the applicant's certificate of citizenship, and not of canceling her status as a U.S. citizen. The AAO notes that under section 340 of the Act, 8 U.S.C. § 1451, only U.S. district courts have jurisdiction over revocation of naturalization cases. Section 340 states in pertinent part that:

- (a) It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefore, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation.