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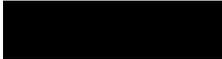
**U.S. Citizenship  
and Immigration  
Services**

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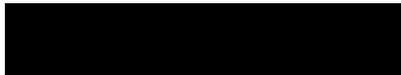
Office: PHILADELPHIA, PA

Date:

NOV 02 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to Section 201(i) of the Nationality Act of 1940, 8 U.S.C. § 601(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

**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 application was denied by the Acting District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant was born on September 26, 1945, in England. The applicant claims that her biological father was [REDACTED] and that he was born in Wiconsico, Pennsylvania on December 6, 1923.<sup>1</sup> The applicant's biological mother was not a U.S. citizen. The applicant claims that her biological parents did not marry. The applicant seeks a certificate of citizenship under section 201 of the Nationality Act of 1940 (the Nationality Act), 8 U.S.C. § 601, based on the claim that she derived U.S. citizenship at birth through her biological father.

The district director determined the applicant had failed to establish that her biological father met the physical presence requirements set forth in section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). The application was denied accordingly.

On appeal the applicant asserts that her citizenship application was erroneously adjudicated pursuant to section 301(g) of the Act provisions. The applicant asserts that instead she qualifies for U.S. citizenship pursuant to section 201(i) of the Nationality Act provisions.<sup>2</sup>

“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.” *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on September 26, 1945. The applicant therefore correctly stated that the U.S. citizenship provisions contained in section 201 of the Nationality Act apply to the present matter.<sup>3</sup>

Section 201(i) of the Nationality Act states that:

A person born outside the United States and its outlying possession of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to

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<sup>1</sup> Documents on contained in the record indicate that the applicant's father was actually born in 1924 and altered his birth registration in order to join the armed forces. The AAO will consider 1924 as the correct year of his birth.

<sup>2</sup> The AAO notes that the record contains a G-28, Notice of Entry of Appearance as Attorney or Representative from an attorney, [REDACTED]. The G-28 was not signed by the applicant. The AAO will consider all evidence presented, but considers the applicant self-represented and will, therefore, only provide a copy of the decision to the applicant.

<sup>3</sup> In 1952, the Nationality Act was replaced by the Immigration and Nationality Act. The provisions contained in section 201 of the Nationality Act have been rewritten and are now contained in section 301 of the Act.

complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

U.S. Citizenship and Immigration Services (CIS) Interpretation 309.1(b) states, in pertinent part:

(b) Paternity established. (1) Nationality Act of 1940 and earlier statutes. Citizenship at birth *jus sanguinis* prior to January 13, 1941, descended through a citizen father to an illegitimate child whose paternity was established by legitimation under the law of the father's domicile. Legitimation conferred full citizenship status upon the child at birth although accomplished long after the child attained majority and even after January 13, 1941, because those born prior thereto were not affected retrospectively by the age limitations on legitimation provided in the 1940 Act.

Citizenship was acquired at birth after January 12, 1941, but before December 24, 1952, if paternity of the child was established during minority by legitimation or court adjudication, and despite initial Service opinion to the contrary, this rule also applied to the child who could only acquire citizenship under section 201(i), Nationality Act of 1940, as amended. As under the earlier law, absent any express statutory provision governing the matter, legitimation for purposes of acquiring citizenship at birth under the Nationality Act of 1940, as amended, could be accomplished in accordance with the law of the putative father's domicile.

In order to meet the U.S. citizenship requirements set forth in section 201(i) of the Nationality Act, the applicant must establish that [REDACTED] is her biological father and that she was legitimated by him. The applicant must additionally establish that [REDACTED] was a U.S. citizen who served honorably in the U.S. Armed Forces between December 7, 1941 and the termination of hostilities in 1945, and that he resided in the U.S. for ten years prior to the applicant's birth on September 26, 1945, at least five years of which occurred after [REDACTED] turned twelve on December 6, 1936. The applicant must then demonstrate that she herself meets the five-year U.S. residence requirements set forth in section 201(i) of the Nationality Act.

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. Under the preponderance of evidence standard, it is generally sufficient that the proof establishes something is probably true. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The record contains the following evidence pertaining to [REDACTED] paternity over the applicant:

A birth certificate reflecting that [REDACTED] was born in England on September 30, 1945 to [REDACTED] (mother) and [REDACTED] (father).

A DNA Diagnostics Center, DNA Parentage Test Report, dated February 14, 2001, reflecting a 99.97% probability that [REDACTED] born December 6, 1924, is the biological father of [REDACTED] born September 26, 1945.

An Application for Immigration Visa and Alien Registration, signed by the U.S. Vice Consul in London, England on September 12, 1952, reflecting that [REDACTED] born September 26, 1945, changed her name, by assumption, to [REDACTED] and that she intended to join her natural father, [REDACTED], residing in Pennsylvania. The applicant obtained a U.S. immigrant visa on December 17, 1952.

Two letters written by [REDACTED] and his wife in 1957, indicating that the applicant resided with them, and inquiring how to obtain U.S. citizenship for her.

The AAO finds that the combined evidence submitted by the applicant, clarifies and overcomes contrary paternal, family name and date of birth information contained in the applicant's birth certificate. The AAO finds that the applicant has established by a preponderance of the evidence that she has been known as "Carol [REDACTED]". The record reflects that the applicant immigrated to the United States in 1952, under the name "[REDACTED]". In addition, the record contains a U.S. Department of Justice, Immigration and Naturalization Service (Service, now CIS), Form G-14 request for a new permanent resident card, dated March 12, 1968, in which the applicant indicated that her previous name was [REDACTED] and that her married name is [REDACTED]. The record contains a marriage certificate reflecting that [REDACTED] married [REDACTED] in Pennsylvania on September 2, 1972, and that they divorced in Pennsylvania on May 11, 1984. The record additionally contains a marriage certificate reflecting that [REDACTED] married [REDACTED] in Pennsylvania on October 17, 1992. The AAO finds further that the DNA evidence submitted by the applicant establishes, by a preponderance of the evidence that [REDACTED] is the applicant's biological father.

The AAO notes that the applicant's Form N-600, Application for Certificate of Citizenship (N-600 application), [REDACTED] records and other general evidence contained in the record reflect that [REDACTED] was born in Pennsylvania and that his domicile was in the state of Pennsylvania. The AAO will therefore analyze whether the applicant has established that she was legitimated pursuant to legitimation requirements in Pennsylvania.

Volume 7 of the U.S. Department of State, Foreign Affairs Manual (7 FAM) reflects that in the State of Pennsylvania, a child is legitimated by the intermarriage of the parents. *See* 7 FAM 1133.4-2 (citing Purdon's Pennsylvania Statutes Annotated (P.S.A), Title 48 § 167(b)(1). *See also* P.S.A. Title 20 § 2107(c). Nevertheless, P.S.A. Title 48 § 167(b)(3) provides that legitimation of a child can also be established if it is shown by clear and convincing evidence that the father openly held the child out as his own, received the child into his home, and provided support for the child, or if there is clear and convincing evidence that the man is the father of the child. *See also* P.S.A. Title 20 § 2107(c).

The AAO finds that the DNA test result evidence contained in the record combined with the evidence that the applicant was admitted into the U.S. based on an immigrant visa she obtained through [REDACTED] and the personal letter evidence that the applicant resided with [REDACTED] and his wife subsequent to her U.S. immigration, establishes by clear and convincing evidence that [REDACTED] legitimated the applicant in accordance with the laws of his domicile in Pennsylvania.<sup>4</sup>

The record contains the following evidence relating to [REDACTED] status as a U.S. citizen and relating to his service in the U.S. Armed Forces during wartime between 1941 and 1945:

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<sup>4</sup> It is noted that the district director's decision mistakenly analyzed the applicant's legitimacy claim pursuant to section 309(a) of the Act legitimation requirements. The AAO finds that the error is harmless, as the applicant has established that [REDACTED] satisfied the former legitimation requirements set forth in the Nationality Act.

A U.S. Department of Commerce, Notification of Birth Registration reflecting that Mr. [REDACTED] was born in Pennsylvania on December 6, 1923.

Two U.S. military "Enlisted Record and Report of Separation, Honorable Discharge" form reflecting that [REDACTED] was born in Wiconisco, Pennsylvania on December 6, 1924, and that he served honorably in the U.S. Armed Forces during World War II and thereafter, between November 1943 and June 1949.

The AAO finds that the above evidence establishes by a preponderance of the evidence that [REDACTED] was born in the United States on December 6, 1924 and that he is a U.S. citizen. The evidence establishes further that [REDACTED] served honorably in the U.S. Armed Forces after December 7, 1941, and before the date of termination of World War II. The AAO finds further that the combined evidence contained in the record establishes that it is probably true that [REDACTED] resided in the U.S. for ten years prior to the applicant's birth, and that at least five years were after [REDACTED] attained the age of twelve on December 6, 1936.

The AAO additionally finds that the applicant has established by a preponderance of the evidence that she resided in the U.S. for five years prior to the age of twenty-one. The 1952, U.S. immigrant visa and 1957, personal letter evidence contained in record reflect that the applicant immigrated to the United States in 1952, when she was seven years old. Moreover, the totality of the evidence contained in the record reflects that subsequent to her 1952, immigration to the U.S., the applicant has remained in the United States.

Based on all of the factors discussed above, the AAO finds that the applicant has established by a preponderance of the evidence that she derived U.S. citizenship at birth through her father, pursuant to section 201(i) of the Nationality Act. Accordingly the appeal will be sustained.

**ORDER:** The appeal is sustained.