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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

E2

[redacted]

Date. JAN 05 2012 Office: SAN ANTONIO, TX FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 [redacted]. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Antonio, Texas, denied the Application for Certificate of Citizenship (Form N-600) and 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 out-of-wedlock in Colombia on November 28, 1995. The applicant's father is a U.S. citizen by birth in [redacted] on February 27, 1957. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on December 25, 2004. The applicant's parents have never married. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The field office director determined that the applicant failed to establish eligibility for citizenship under section 309(a) of the Act because she failed to demonstrate a blood relationship between her and her father by clear and convincing evidence. The field office director denied the application accordingly. *See Decision of the Field Office Director*, dated January 12, 2011. On appeal, counsel contends that the applicant's father is the acknowledged father of the applicant under [redacted] *See Form I-290B*. Counsel indicated that he would submit a brief and/or additional evidence within thirty days. The record does not contain the brief and/or evidence counsel indicated would be submitted to this office. Accordingly, the record is complete.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1995. Accordingly, current section 301(g) of the Act controls her claim to acquired citizenship.

Section 301(g) of the Act stated 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 five years, at least two of which were after attaining the age of fourteen years. . .

Additionally, because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act also apply to this case. Section 309(a) of the Act, 8 U.S.C. § 1409(a), provides, in pertinent part:

> 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.

Therefore, the applicant must establish by clear and convincing evidence a blood relationship between herself and her U.S. citizen father. Additionally, the applicant must establish that her father was physically present in the United States for no less than five years before her birth [redacted] and that at least two of these years were after his father's fourteenth birthday.

While counsel contends that under the Texas Family Code a DNA test performed more the four years after the acknowledgement of paternity of the child is inadmissible and that the applicant has established that [redacted] her father under Texas law, federal law supersedes state law in U.S. citizenship matters. *See Nguyen v. I.N.S.*, 533 U.S. 53, 60-61 (2001) (acknowledging Congress' power over citizenship laws when rejecting equal protection challenge to section 309(a) of the Act). The applicant *must* establish by *clear and convincing* evidence a blood relationship between herself and her U.S. citizen father. Because the evidence submitted by the applicant failed to meet this standard, U.S. Citizenship and Immigration Service (USCIS) requested the applicant to submit evidence of a DNA test to establish a blood relationship between herself and her U.S. citizen father. The applicant's father refused to submit to DNA testing. Because the applicant has not demonstrated a blood relationship between herself and her U.S. citizen father by clear and convincing evidence, no purpose would be served in evaluating whether the applicant has met any of the other requirements under section 309(a) of the Act or whether the applicant's father meets the physical presence requirements set forth in section 301(g) of the Act.

In addition, the applicant is not eligible to derive U.S. citizenship under section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), because the applicant is not residing in the legal and physical custody of her citizen parent.[1]

[1] The record reflects that the applicant resides with her uncle.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that she meets the requirements set forth in section 309(a) of the Act. Accordingly, the applicant is not eligible for citizenship under section 301(g) of the Act.

The appeal will therefore be dismissed.

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