



U.S. Citizenship  
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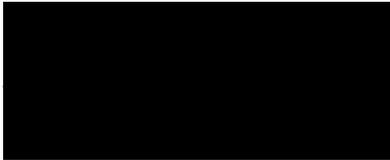
*EJ*

FILE:  Office: MIAMI, FLORIDA Date: **DEC 23 2005**

IN RE: Applicant: 

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

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director found that the record contained no evidence of the applicant's birth, and that the record contained contradictory and inconsistent information relating to the applicant's parentage, the circumstances of her birth, and her subsequent custody with [REDACTED]. The district director concluded that the applicant had failed to establish by a preponderance of the evidence that she qualified for citizenship under section 301(f) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(f), and the application was denied accordingly.

Counsel asserts on appeal that affidavit evidence obtained from the applicant's mother, as well as baptismal, medical and school attendance records establish that the applicant's biological parents are unknown, that the applicant was found in the United States within a few days of her birth, and that apart from her apparent birth abroad, the applicant has lived in the U.S. all of her life. On this basis, counsel asserts that the applicant qualifies for U.S. citizenship pursuant to section 301(f) of the Act.

Section 301(f) of the Act provides that the following shall be nationals and citizens of the United States at birth:

A person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

Immigration and Naturalization Service (Service, now, U.S. Citizenship and Immigration Services, CIS) Interpretations 301(a)(7) explains further that:

[A] person whose parentage is . . . unknown, if found in the United States . . . while under 5 years of age, is conclusively presumed to be a native-born citizen, unless such person's birth outside the United States is established before he or she attains majority.

Volume 7 of the U.S. Department of State, Foreign Affairs Manual (7 FAM) section 1118(a) states that:

Under Section 301(f) . . . a child of unknown parents is conclusively presumed to be a U.S. citizen if found in the United States when under 5 years of age, unless foreign birth is established before the child reaches age 21.

8 C.F.R. 341.2(c) provides 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 record contains the following evidence pertaining to the applicant's birth, identity, and presence in the United States:

A sworn affidavit signed by [REDACTED] on August 2, 2002, stating in pertinent part that her husband, [REDACTED] brought a baby

girl with her umbilical cord still attached, to their home in Florida on March 18, 1983. [REDACTED] indicates that she was very surprised when this happened, and that when she asked her husband where he got the baby or if it was his, he simply told her not to worry and that the baby was theirs. [REDACTED] states that she monitored the news to see if a baby had been reported missing, but that no such reports were made. Ms. [REDACTED] explains that she and her husband were unable to have or adopt a child of their own because her husband had been diagnosed with schizophrenia and was on medication. [REDACTED] states she believes her husband brought her the baby because he realized how sad she was about not having children. [REDACTED] states further that she did not report the events to the police or any other authorities, and that she raised the child as her own.

A Form N-400, "Application to File Petition for Naturalization" (N400 Petition) sworn to by [REDACTED] on September 3, 1993, stating in pertinent part that her child, Desiree was born on March 13, 1983 in Guatemala, and that Desiree entered the U.S. with Ms. [REDACTED] through Miami, Florida on April 23, 1983.

An April 23, 2004, interview note summary signed by Immigration Officer, [REDACTED] stating that [REDACTED] testified under oath during a tape-recorded interview that a pregnant woman named [REDACTED] (who was a neighbor's friend's employee) learned of [REDACTED] inability to have or adopt children. After giving birth, [REDACTED] appeared at [REDACTED] home and gave an approximately two-week old child to Ms. [REDACTED] husband, stating she would be back later to pick the child up. The interview summary notes reflect [REDACTED] statement that the child had her umbilical cord attached and that a calendar date of birth was attached to her body. The interview summary notes reflect further [REDACTED] statement that [REDACTED] did not return for the child, and that in spite of her efforts to locate [REDACTED] was unable to find her.

A Certificate of Baptism reflecting that [REDACTED], child of [REDACTED], was born on March 13, 1983, and that she was baptized at the Church of Immaculate Conception in Hialeah, Florida on September 25, 1983.

School records reflecting that the applicant attended Catholic school in Hialeah, Florida between 1987 and 1997, and that her parents are [REDACTED] and [REDACTED].

Pediatric medical records reflecting that the applicant first received medical treatment in Florida on April 26, 1983, and that she obtained regular pediatric treatment in Florida until approximately 1998.

The record contains no evidence to establish the basis on which the applicant's date of birth and parental information was recorded on her baptismal certificate or her school and medical records.

The AAO finds that the evidence establishes the applicant was in the U.S. while under the age of five, and throughout her childhood. The AAO finds, however, that the applicant has failed to establish by a preponderance of the evidence, the circumstances of her birth or her discovery and presence in the United States.

The AAO notes that the evidence relating to the discovery of the applicant and her presence in the United States consists solely of statements made by [REDACTED]. The AAO notes further that the record contains three materially different explanations regarding the circumstances of the applicant's discovery and her presence in the United States. As noted in the district director's decision, [REDACTED] N400 Petition indicates that the applicant was born in Guatemala on March 13, 1983, and that [REDACTED] brought the applicant into the U.S. on April 23, 1983. Ms. Rodriguez's August 2, 2002 affidavit, on the other hand, indicates that her husband unexpectedly brought the applicant to their home on March 18, 1983, and that Ms. [REDACTED] did not know where the baby came from or how her husband came to possess the baby. Moreover, April 23, 2004, summary notes from a CIS interview with [REDACTED] reflect her statement that a neighbor's friend's employee brought her own baby to [REDACTED] home and left the baby with Ms. [REDACTED] husband.

The AAO notes counsel's assertions on appeal that [REDACTED] has never traveled to Guatemala, that Ms. [REDACTED] does not remember providing information about the applicant in her N400 Petition, and that the N400 Petition information must be erroneous. The AAO finds that counsel's assertions are uncorroborated and do not constitute evidence. The AAO finds further that the applicant has failed to provide any evidence to explain or overcome the material inconsistencies contained in the record regarding the applicant's birth and the circumstances surrounding the applicant's presence in the U.S. and her custody with [REDACTED].

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has not met the burden of establishing that she qualifies for citizenship under section 301(f) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.