

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY

E2

FILE:



Office: NEW YORK, NEW YORK

Date: NOV 03 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under §§ 301(g) and 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1431.

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on January 11, 1982 in Trinidad and Tobago. The applicant's mother is not a U.S. citizen, and her parents never married, but her paternity has been established. The applicant's father is a U.S. citizen by birth, and he has lived his entire life in the United States. The applicant entered the United States as a non-immigrant on May 2, 1997, and she has remained here since that date. The applicant seeks a certificate of citizenship pursuant to § 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that she is entitled to U.S. citizenship through her father.

The district director denied the application based on his conclusion that the applicant had not been legitimated prior to her eighteenth birthday. The district director found that, for this reason, the provisions of § 301(g) of the Act did not apply to the applicant, and she did not derive citizenship at birth from her father. The AAO finds that the district director incorrectly concluded that the applicant had not been legitimated before she turned eighteen.

On appeal, the counsel asserts that the 1981 Status of Children Act (SCA) of Trinidad and Tobago applies to the applicant, removing any legal distinction regarding legitimacy stemming from her birth out of wedlock. Counsel contends that since the applicant was considered to have been born legitimate by operation of the SCA, she qualifies for U.S. citizenship pursuant to § 301(g) of the Act.

The district director noted that the applicant did not qualify for a certificate of citizenship pursuant to § 320 of the Act, which applies to a child born outside of the United States, but residing in the U.S., and provides in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The record reflects that the applicant was not admitted into the U.S. pursuant to a lawful admission for permanent residence, and she is over eighteen years of age. The AAO concurs with the district director that the applicant does not meet the requirements for automatic citizenship as set forth in § 320 of the Act.

"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). The applicant was born in 1982; therefore, the AAO will consider the application pursuant to § 301(g) of the Act prior to its amendment in 1986.

Section 301(g) of the Act, 8 U.S.C. § 1401, prior to 1986, stated in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) 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

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

In order to meet the definition of "child" prior to November 14, 1986, § 309 of the Act required that paternity be established by legitimation while the child was under twenty-one. Subsequent amendments made to the Act in 1986, provided that a new § 309(a) would apply to persons who had not attained eighteen years of age as of the November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided that the former § 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and also to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See § 13 of the INAA, supra. See also § 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.*

The district director erroneously found that the 1981 Status of Children Act (SCA), enacted in the Republic of Trinidad and Tobago on March 1, 1983, did not legitimate the applicant, because she was born prior to its enactment. The purpose of the SCA was the elimination of all legal distinctions between legitimate and illegitimate children whose paternity had been established. The Board of Immigration Appeals has held that when the country where a child is born eliminates all legal distinctions between legitimate and illegitimate children, all children are deemed to be the legitimate offspring of their natural father from the time that country's laws are changed. *See Matter of Pavlovic*, 17 I&N Dec. 470 (BIA 1980); *Matter of Hernandez*, 17 I&N Dec. 7 (BIA 1979). In *Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988), the Board dealt with a petition for alien relative filed by a petitioner whose natural son was born out of wedlock in Trinidad and Tobago. The Board held that, as the beneficiary was under eighteen years of age when the SCA took effect, he qualified as the petitioner's legitimate child for immigration purposes.

In the present matter, as of the March 1, 1983 date of enactment of the SCA, the applicant was considered to have been a legitimate child at the time of her birth in Trinidad and Tobago. Given that the applicant was born legitimate prior to November 14, 1986, former § 309(a) of the Act applies and provides that the requirements set forth at § 301(g) govern the applicant's eligibility for derivative U.S. citizenship. The evidence establishes that the applicant was a legitimate child at birth, and there is no need to demonstrate that she was legitimated after birth.

The applicant has established that her father was born in the United States and that he was physically present in the United States for a total of ten years, at least five of which were after attaining the age of fourteen years, as required under § 301(g) of the Act. The record contains a birth certificate showing the applicant's father's birth in South Carolina on October 15, 1943; hence, he was a U.S. citizen at the time of the applicant's birth in 1982. The record also contains affidavits and school, employment, and other records

establishing that the applicant's father lived in the United States for at least twenty three years prior to the applicant's birth in 1982, at least ten years of which occurred after her father's fourteenth birthday in 1957. Finally, the AAO notes that evidence on the record, including State Department documentation and affidavits, documents the applicant's father's use of two different last names, [REDACTED]

The applicant has met the burden of proof in establishing her claim to U.S. citizenship through her father. The appeal will therefore be sustained.

ORDER: The appeal is sustained.