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U.S. Citizenship
and Immigration
Services

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APR 18 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application Certificate of Citizenship under sections 320 and 309 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in India on November 14, 1996. The applicant's father, [REDACTED] was born in India and he became a naturalized U.S. citizen on November 14, 1995, prior to the applicant's birth. The applicant's mother, [REDACTED] was born in India, and she was not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on September 5, 2004, when she was seven years old. She presently seeks a certificate of citizenship pursuant to sections 320 and 309 of the Immigration and Nationality Act (the Act); 8 U.S.C. §§ 1431 and 1409.

The director determined the applicant had failed to establish that she was legitimated by her father or that she acquired citizenship at birth under sections 309 or 301(g) of the Act. The application was denied accordingly. The director did not address the applicant's derivative citizenship under section 320 of the Act.

On appeal the applicant asserts through her father, that the evidence demonstrates her parents were legally married and that [REDACTED] is her biological father. The applicant asserts that she is entitled to U.S. citizenship based on her father's naturalization as a U.S. citizen and her own admission into the United States as a lawful permanent resident prior to her 18th birthday.

Section 320 of the Act contains provisions for automatic vesting of U.S. citizenship for a child of a naturalized U.S. citizen, and states 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.

Section 101(c) of the Act defines the term "child" for citizenship purposes, and states in pertinent part that:

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 . . . at the time of such legitimation. . . .

The applicant's birth certificate reflects that her father is [REDACTED] and that her mother is [REDACTED]. The record contains a copy of a letter dated, 1-4-1985, and signed by [REDACTED] of Sacred Heart Church, Telaprolu, India, indicating that a religious marriage took place between Medepalli [REDACTED] and [REDACTED] (spelling illegible) on October 19, 1967. The record contains no other evidence to support the applicant's contention on appeal that her parents were married. The AAO notes that the religious marriage letter contained in the record is not authenticated. It is additionally noted that the applicant's mother's name, as listed on the applicant's birth certificate, appears to differ from the wife's name as stated in the religious marriage letter. Furthermore, the record lacks evidence to corroborate the applicant's assertion on appeal that a religious marriage constitutes a legally valid marriage in India. Based on the lack of

evidence of a legally valid marriage between her parents, the AAO finds that the applicant has failed to establish that she was born in wedlock. Accordingly, the applicant must establish that she was legitimated by her father in accordance with the law in India (the applicant's residence or domicile prior to her 16th birthday), or in accordance with the law in her father's residence or domicile prior to the applicant's 16th birthday, as set forth in section 101(c) of the Act.

The record contains no evidence to indicate or establish that a child born out of wedlock is considered to be a legitimate child in India, and the applicant has failed to establish that she was legitimated under Indian law prior to her 16th birthday. The AAO finds, however, that it has been established that the applicant was legitimated under the laws of her father's residence or domicile, in New Jersey, prior to her 16th birthday. In *Matter of Garcia*, 19 I&N Dec. 416, 418 (BIA 1986) the Board of Immigration Appeals (Board) found that a child born out of wedlock was legitimated pursuant to New Jersey Parentage Act of 1983 provisions which state that regardless of the marital status of the parents, all children have equal rights with respect to one another. In the present matter, the record reflects that the applicant was born in 1996, after the enactment of the New Jersey Parentage Act of 1983. The record indicates further that the applicant's father was naturalized in New Jersey in 1995, and that her father has resided in New Jersey from at least 1995 until the present time. Based on the evidence, the AAO finds that the applicant established that she was legitimated by her father prior to her 16th birthday, pursuant to the New Jersey Parentage Act of 1983. The applicant therefore meets the legitimation requirements set forth in section 101(c) of the Act. Furthermore, the Board held in *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980), that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. The record contains no evidence indicating that the applicant's father at any time relinquished his legal custody over the applicant. The AAO therefore finds that the applicant's father had legal custody over the applicant at the time of her legitimation and prior to her 16th birthday. Accordingly, the applicant meets the definition of "child" as set forth in section 101(c) of the Act.

For the reasons set forth above, the applicant has also established that she meets the legal custody requirements set forth in section 320(a)(3) of the Act. The applicant has additionally established that she meets the physical custody requirements of section 320(a)(3) of the Act. The record reflects that the applicant was admitted into the United States as a lawful permanent resident on September 5, 2004, when she was seven years old. The applicant's Form I-130, Petition for Alien Relative reflects that upon admission into the United States, the applicant intended to reside with her father in New Jersey. Nothing in the record contradicts the applicant's Form N-600, Application for Citizenship claim that she has resided with her father in New Jersey since her admission in September 2004.

The regulations provide at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has established that she is under the age of 18, that she is the child of a U.S. citizen parent, and that she resides in the U.S. in the legal and physical custody of her U.S. citizen parent pursuant to a lawful admission for permanent residence. The applicant has therefore satisfied all of the section 320 of the Act requirements for automatic vesting of her U.S. citizenship.

The applicant has also established that she acquired U.S. citizenship under section 309 of the Act. In the present matter the applicant's father was a naturalized U.S. citizen at the time of the applicant's birth. The applicant was thus born of a U.S. citizen, and she qualifies for consideration of her U.S. citizenship claim under section 309 of the Act.

Section 309 of the Act states in pertinent part that:

- (a) The provisions of paragraphs . . . (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.

Section 301(g) of the Act states that the following shall be citizens of the United States at birth:

[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 five years, at least two of which were after attaining the age of fourteen years.

As discussed above, the evidence in the record establishes that the applicant is the biological child of [REDACTED]. The evidence also establishes that [REDACTED] was a U.S. citizen at the time of the applicant's birth. In addition, the evidence in the record establishes that the applicant's residence or domicile after September 2004 was in New Jersey, and the applicant has established that she was legitimated under New Jersey law prior to her 18th birthday. Accordingly, the requirements set forth in section 309(a)(1), (2), and (4) have been met. The AAO additionally finds that the Form I-864, Affidavit of Support Under Section 213A of the Act, signed on March 4, 2004 under penalty of perjury, by the applicant's father satisfies the financial support requirements of section 309(a)(3) of the Act. The evidence in the record also establishes that the applicant's father was physically present in the United States for a period of five years prior to the applicant's birth, at least two years of which were after the age of fourteen, as required by section 301(g) of the Act.

The record contains [REDACTED] State of New Jersey medical license dated July 25, 1975, as well as [REDACTED] U.S. Social Security earnings statement reflecting that he earned a salary in the United States every year between 1974 and the date of the issuance of the statement in 2003. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. The AAO finds that the cumulative evidence presented in the applicant's case establishes by a preponderance of the evidence that [REDACTED] was physically present in the U.S. for a period of five years prior to the applicant's birth, at least two years of which were after he was fourteen. Accordingly, the applicant has established that she acquired U.S. citizenship at birth under section 309 of the Act.

The regulations provide at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has established her U.S. citizenship under sections 320 and 309 of the Act. The appeal will therefore be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.