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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: NEW YORK, NY

Date:

JUN 05 2008

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to Sections 309 and 301(g) of the Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401(g).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

.. Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form N-600 will be approved.

The record reflects that the applicant was born in China on May 8, 1987. The applicant's mother is not a U.S. citizen. The applicant's father, [REDACTED], was born in China on May 5, 1930, and he became a naturalized U.S. citizen on June 1, 1976, prior to the applicant's birth. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on March 3, 2006, when she was eighteen years old. She presently seeks a certificate of citizenship pursuant to sections 309 and 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409 and 1401(g), based on the claim that she acquired U.S. citizenship at birth through her father.

The district director determined that the applicant was ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because she was over the age of eighteen when she became a U.S. lawful permanent resident. The district director determined further that the applicant was ineligible for citizenship under sections 309 and 301(g) of the Act, because she had provided insufficient evidence to establish that her father was physically present in the United States for five years prior to her birth, at least two years of which were after he turned fourteen. The Form N-600 application was denied accordingly.

On appeal, the applicant indicates that the record contains sufficient evidence to establish that her father was a U.S. citizen at the time of her birth, and that she is entitled to U.S. citizenship.

Section 320 of the Act 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.

The record reflects that the applicant turned eighteen on May 8, 2005. She was admitted into the United States as a lawful permanent resident almost a year later, on March 3, 2006. Because the applicant was eighteen years old at the time of her admission into the United States as a lawful permanent resident, she does not meet the requirements for U.S. citizenship under section 320 of the Act.

Section 309 of the Act applies to children born out of wedlock to a U.S. citizen father, and 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 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 record reflects that the applicant's parents were not married at the time of her birth. In order to qualify as a child for immigration purposes, the applicant must therefore establish that prior to her sixteenth birthday, she was legitimated by her father under the law in New York (her father's domicile) or the law in China (the applicant's domicile.)

The AAO notes that New York State law requires the parents of a child born out of wedlock to marry one another in order to legitimate the child. *See* New York Domestic Relations Law, Section 24; *see also, Matter of Espinoza*, 17 I&N Dec. 522 (BIA 1980.) In the present matter, the applicant's parents did not marry. Accordingly, the applicant was not legitimated under New York State law.

It is noted that Article 14 of the Marriage Law of the People's Republic of China (PRC) provides that all children born in the PRC are legitimate upon establishment of paternity. *Lau v. Kiley*, 563 F.2d. 543, 548 (2nd. Cir. 1977.) In the present matter the record contains a September 9, 1996, PRC certificate certifying that the applicant is the child of [REDACTED].) The AAO finds that the PRC certificate establishes the applicant's father's [REDACTED] paternity over the applicant. The applicant therefore established that she was legitimated by her father, under Chinese law, prior to her sixteenth birthday.

Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). The Board of Immigration Appeals 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 to indicate that the applicant's father has, at any time, relinquished his natural right to legal custody over the applicant. The AAO therefore finds that the applicant's father had legal custody over the applicant at the time of legitimation, and prior

to her sixteenth birthday. The applicant therefore meets the definition of child as set forth in section 101(c) of the Act.

The applicant has also established that she meets the requirements set forth in section 309 of the Act. The AAO finds that the PRC certificate contained in the record establishes by clear and convincing evidence that [REDACTED] is the applicant's natural father, and [REDACTED]'s naturalization certificate establishes that he was a U.S. citizen at the time of the applicant's birth. The applicant has additionally established that she was legitimated by her father under Chinese law prior to her eighteenth birthday. Moreover, Form I-864, Affidavit of Support evidence signed by [REDACTED] on December 7, 2004, and contained in the record, establishes that [REDACTED] agreed in writing to provide financial support for the applicant until she reached the age of eighteen. Because the applicant meets the requirements of section 309 of the Act, her acquisition of U.S. citizenship claim may be considered under section 301(g) of the Act.

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.

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

The evidence relating to [REDACTED]'s physical presence in the United States prior to the applicant's birth consists of: [REDACTED]'s naturalization certificate, reflecting that he became a naturalized U.S. citizen in New York on June 1, 1976; a U.S. Social Security Administration statement reflecting [REDACTED]'s yearly U.S. earnings between 1961-1979, and 1981-1986.

The AAO notes that in order to be naturalized as a United States citizen, the Immigration and Nationality Act provides that a person must reside continuously in the United States as a lawful permanent resident for at least five years prior to filing an application for naturalization. *See* Section 316 of the Act, 8 U.S.C. § 1427. The AAO notes further that [REDACTED]'s U.S. Social Security Administration statement reflects yearly earnings for a total of eighteen years between the years 1961-1979, and 1981-1986. Upon review of the totality of the evidence, the AAO finds that the applicant has established, by a preponderance of the evidence, that her father was physically present in the United States for at least five years prior to her birth, at least two years of which occurred after [REDACTED] turned fourteen, on May 5, 1944. The applicant therefore established that she meets the requirements for acquisition of citizenship under section 301(g) of the Act.

Because the applicant has met her burden of proof in the present matter, the appeal will be sustained and the application approved.

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