identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

E2

FILE: [redacted] Office: PHILADELPHIA, PA Date: DEC 17 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1993).

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on February 3, 1993 in Mexico. [redacted] were not married to each other until 2002. The applicant's father was born in the United States on March 15, 1964. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that she had not obtained lawful permanent residency in the United States as is required by section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

On appeal, the applicant, through counsel, states that she is eligible for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g). *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. Immigration and Naturalization Service,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1993. Section 301(g) of the Act, 8 U.S.C. § 1401(g), as amended by the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, therefore applies to the present case.

Section 301(g) of the Act states, in pertinent part, 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 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.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her case. Section 309(a) of the Act, as amended by the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), states, in relevant part:

> (a) 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.

The applicant must thus establish that she has fulfilled the requirements of sections 301(g) and 309(a) of the Act. As the director erroneously considered the applicant's eligibility for U.S. citizenship under section 320 of the Act, her decision must be withdrawn and the matter remanded for entry of a new decision. Upon remand, the director must provide the applicant an opportunity to submit evidence that she fulfilled the requirements of sections 301(g) and 309(a) of the Act before entering a new decision into the record. If the applicant is found ineligible for citizenship under sections 301(a) and 309(a) of the Act, the director shall certify her decision to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.