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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **SEP 15 2011**

Office: PHILADELPHIA, PA

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

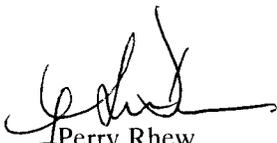


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born out-of-wedlock in South Korea on February 2, 1978. The applicant's biological mother, [REDACTED], is a native and citizen of South Korea. The applicant's biological father is unknown. On August 3, 1978, the applicant was adopted by [REDACTED] and [REDACTED], both U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident on September 26, 1978. On July 29, 1996, the applicant pled guilty to and was convicted of assault, recklessly endangering another and criminal conspiracy. The applicant was sentenced to 9 to 48 months in jail. On October 26, 2001, the applicant pled guilty to and was convicted of possession of a firearm without a license. The applicant was sentenced to 6 to 23 months in jail. On November 18, 2003, the applicant pled guilty to and was convicted of aggravated assault and endangering the welfare of a child. The applicant was sentenced to 2 years and 6 months to five years in jail and two years and two days of probation. On June 27, 2008, the applicant was placed into immigration proceedings pursuant to sections 237(a)(2)(A)(ii), 237(a)(2)(A)(iii), 237(a)(2)(C) and 237(a)(2)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1227(a)(2)(A)(ii), 1227(a)(2)(A)(iii), 1227(a)(2)(C) and 1227(a)(2)(E)(i), for being convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, for being convicted of an aggravated felony, for being convicted of a firearms offense and for being convicted of domestic violence, stalking, child abuse, child neglect or child abandonment. On May 13, 2010, the immigration judge denied the applicant's application for protection under the Convention Against Torture and ordered the applicant removed from the United States, thereby terminating his lawful permanent resident status. The applicant appealed to the Board of Immigration Appeals (BIA). On October 4, 2010, the BIA dismissed the applicant's appeal.

The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his biological father pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). Alternatively, the applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship pursuant to section 301(f) of the Act, 8 U.S.C. § 1401(f).

The field office director determined that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that his biological father is a U.S. citizen or that he meets the definition of a "foundling." *See Decision of the Field Office Director*, dated December 22, 2009. The application was denied accordingly. On appeal, counsel contends that the field officer's determination that the applicant did not qualify for citizenship under section 301(f) of the Act is contrary to the plain meaning of the statute; and that the field office director incorrectly adjudicated the applicant's citizenship claim under section 301(g) of the Act because she failed to take an historical view of the circumstances of the applicant's birth. *See Counsel's Brief*, undated.

301(f) of the Act

Section 201(f) of the Nationality Act of 1940 first codified the presumption of U.S. citizenship for children who are found in the United States at a young age. The Nationality Act of 1940 was in

effect until December 23, 1952, when section 301(f) of the Act, 8 U.S.C. § 1401(f), became effective.

Under section 301(f) of the Act, 8 U.S.C. § 1401(f), the following shall be a national or citizen 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

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.

The regulation at 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:

1. Copies and translation of South Korean Family Record (Birth Certificate) for the applicant indicating that he was born at Holy Family Hospital in Euijungboo, Kyongi, South Korea to [REDACTED], a native and citizen of South Korea, and to an unknown father. The Birth Certificate also indicates that the applicant was adopted by [REDACTED], U.S. citizens, on August 3, 1978.
2. Copies and translation of an Application for Passport for the applicant indicating that the applicant was issued a South Korean passport on September 21, 1978 for the purpose of international adoption.
3. Certificate of Adoption indicating that the applicant was adopted by [REDACTED] on August 3, 1978.
4. An approved Application to Classify Orphan as Immediate Relative (Form I-600) indicating that the applicant is a native and citizen of South Korea who was born in Euijungboo, Kyongi, South Korea.
5. An Immigrant Visa and Alien Registration Form indicating that the applicant is a native and citizen of South Korea who was admitted to the United States as a lawful permanent resident on September 26, 1978.

The AAO finds that the evidence establishes the applicant was in the United States while under the age of five, and throughout his childhood. The AAO finds, however, that the applicant's foreign birth is clearly established and was established prior to his entry into the United States and he, therefore, cannot establish by a preponderance of the evidence that he is presumed to have U.S. citizenship at birth because he was "found" in the United States and his foreign birth was not established before he was 21.

301(g) 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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1978. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.¹

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Additionally, because the applicant was born out of wedlock, the derivative citizenship provisions set forth in section 309 of the Act also apply to this case.² Section 309(a) of the Act, 8 U.S.C. § 1409(a), provides, in pertinent part:

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.

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

² Former section 309(a) of the Act, which required that paternity be established by legitimation before a child turned 21, is inapplicable to this case because it applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

- (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.

Therefore, the applicant must establish by clear and convincing evidence a blood relationship between himself and his U.S. citizen father and that his paternity was established by legitimation before his twenty-first birthday on February 2, 1999. Additionally, the applicant must establish that his father was physically present in the United States for no less than ten years before his birth on February 2, 1978, and that at least five of these years were after his father's fourteenth birthday.

Counsel contends that the applicant's paternity should be established through a historical view of the circumstances of his birth; however, the law requires that the identity of the applicant's father be established by clear and convincing evidence. The applicant is unable to provide the identity of his purported biological U.S. citizen father. Accordingly, the applicant has failed to establish his paternity, and cannot also establish that his paternity was established by legitimation under the laws of any country or domicile.

Because the applicant has not demonstrated that his paternity was established by legitimation before February 2, 1999, no purpose would be served in evaluating whether the applicant's father met the physical presence requirements set forth in former section 301(a)(7) of the Act. *See* former section 309(a) of the Act (stating that former section 301(a)(7) of the Act only applied to children born out of wedlock if they met the legitimation requirements).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in section 309(a) of the Act. Accordingly, the applicant is not eligible for citizenship under former section 301(a)(7) of the Act. For the presumption of citizenship in section 301(f) of the Act to apply, the applicant must establish that he was a person of unknown parentage, found in the United States prior to the age of 5, and whose foreign birth was not established prior to the age of 21. The AAO finds that the applicant's birth abroad was well established prior to the age of 21 and even before his entry into the United States. The AAO further finds that the applicant has failed to meet his burden to

establish that he is "of unknown parentage." Thus, the AAO concludes that the applicant has not met the burden of establishing that he qualifies for citizenship under section 301(f) of the Act, 8 U.S.C. § 1401(f).

The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. The application remains denied.