



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date:

APR 05 2013

Office: ST. PAUL, MN

FILE:

IN RE:

Respondent:

APPLICATION:

Application for Certificate of Citizenship under Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409.

ON BEHALF OF RESPONDENT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for a certificate of citizenship was denied by the Field Office Director, St. Paul, Minnesota, and the director's decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on [REDACTED] in Germany. The applicant's birth certificate indicates that her mother is [REDACTED] a German citizen. The applicant's mother married [REDACTED] in 1991, and the applicant's birth certificate was annotated to reflect her father's name and parents' marriage. [REDACTED] is a U.S. citizen, born in Wisconsin in 1959. The respondent seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth as the legitimate child of a U.S. citizen.

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

Section 101(c) of the Act provides, in relevant part, the following definition of child for purposes of Title III of the Act:

...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, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The AAO notes that, unlike the definition of "child" found in section 101(b) of the Act, 8 U.S.C. § 1101(b), the section 101(c) definition of "child" that is applicable to naturalization and citizenship cases does not include a step-parent provision. The AAO further notes that section 301 of the Act does not contain the term "child." Lastly, the term "parent" is not defined for purposes of naturalization and citizenship cases in the Act.

In support of the applicant's claim that she acquired U.S. citizenship at birth, counsel cites to *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9<sup>th</sup> Cir. 2005) and *Scales v. INS*, 232 F.3d 1159 (9<sup>th</sup> Cir. 2000). See Applicant's Appeal Brief at 4-5. Reliance on these cases is misplaced. First, contrary to counsel's arguments, the AAO is not bound in this case by Ninth Circuit decisions as this matter arises within the jurisdiction of the Eighth Circuit Court of Appeals. Additionally,

*Scales* and *Solis-Espinoza* related to applicants born in wedlock.<sup>1</sup> The applicant's mother married [REDACTED] years after the applicant's birth. Regardless of the notation in the applicant's birth certificate, the fact remains that the applicant was born in 1988 and her mother married [REDACTED] in 1991. She was therefore not born in wedlock. The cases cited are not only unpersuasive, but also not pertinent to the applicant's case.

U.S. citizenship can only be transmitted under to INA § 301(g) by a biological U.S. citizen parent.<sup>2</sup> This interpretation is premised on the language of the statute itself ("born . . . of parents") as well as on the concept of *jus sanguinis*. See 8 Whiteman, Digest of International Law, at 119 (1967) (explaining acquisition of U.S. nationality at birth through *jus soli* or *jus sanguinis* under the Act). Black's Law Dictionary defines "*jus sanguinis*" as "the right of blood. The principle that a person's citizenship is determined by the citizenship of the parents." See also *Miller v. Albright*, 523 U.S. 420, 436 (1998) (explaining that "ensuring reliable proof of a biological relationship between the potential citizen and its citizen parent is an important governmental objective") (citations omitted).

The AAO further notes that the applicable provision for transmission of U.S. citizenship to children born out of wedlock specifically requires clear and convincing proof of a blood relationship between parent and child.<sup>3</sup> The record notably does not contain any evidence of the

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<sup>1</sup> The applicant in *Scales* was born during his mother's marriage to a U.S. citizen. The Ninth Circuit found that the applicant in *Solis-Espinoza* was born in wedlock because he was born during his natural father's marriage to his step-mother. The applicant in this case was born prior to her mother's marriage to [REDACTED]. She was born out of wedlock. See Black's Law Dictionary (defining "born out of wedlock" as born to "parents [who] are not, and have not been, married to each other regardless of marital status of either parent with respect to another").

<sup>2</sup> See 7 Foreign Affairs Manual (FAM) 1131.2 (stating that since 1790 there has been a requirement that "[a]t least one *natural* parent must have been a U.S. citizen when the child was born") (emphasis in original) and 7 FAM 1131.4 (stating that "[a]bsent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired").

<sup>3</sup> Section 309(a) of the Act states:

- (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,

applicant's blood relationship to [REDACTED] The applicant therefore did not acquire U.S. citizenship through [REDACTED] under section 301, 309 or any other provision of the Act.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has not met his burden of proof. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

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- (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.