



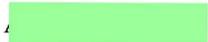
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 06 2013**

Office: MINNEAPOLIS, MN

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "R. Rosenberg", written over the typed name.

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (the director), Minneapolis, Minnesota, and the matter 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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.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 [REDACTED] in Canada. The applicant's father [REDACTED] was born in California on October 6, 1970. The applicant's parents were married in 1997. The applicant became a lawful permanent resident of the United States on October 23, 2001. The applicant's eighteenth birthday was on August 4, 2008. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(g).

The field office director denied the applicant's Application for Certificate of Citizenship (Form N-600), finding that the applicant had failed to establish that her father had been physically present in the United States as required by section 301 of the Act. See Decision of the Field Office Director dated April 1, 2013.

On appeal, the applicant submits her father's school records evidencing his enrollment in school in California from kindergarten through high school.

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 1990. Section 301(g) of the Act therefore applies to the present case.

Former section 301(g) of the Act stated, 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

Because the applicant was born prior to her parent's marriage, she is deemed to have been born out of wedlock. Section 301(g) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the conditions specified in section 309(a) of the Act.

Section 309(a) of the Act 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 record does not contain the results of a DNA test establishing the blood relationship between the applicant and her father. The record also does not contain evidence that the applicant's father agreed in writing to provide financial support for the applicant until her eighteenth birthday. Thus, the applicant has not met her burden of proof that she fulfilled the requirements of section 309(a) of the Act.

The AAO notes, however, that the applicant may have automatically acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, but it applies to persons, like the applicant, who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, 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, 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

The record shows that the applicant was born out of wedlock, and that her parents were married subsequent to her birth. The director, however, did not determine whether the applicant was legitimated or consider the applicant's eligibility under section 320 of the Act, as amended by the CCA.

As the director did not consider whether the applicant fulfilled the requirements of section 309(a) of the Act or, alternatively, whether she automatically acquired 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 section 309(a) of the Act or, alternatively, of section 320 of the Act, before entering a new decision into the record. If the new decision is adverse to the applicant, it shall be certified 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.