



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **OCT 21 2013** OFFICE: SAN ANTONIO, TX FILE: [Redacted]
IN RE: Applicant: [Redacted]
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 APPLICANT:

[Redacted]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant was born in Germany on July 20, 1988, to unmarried parents. The record reflects that the applicant's father was born in the United States on March 8, 1972, and is a U.S. citizen. The applicant's mother is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on June 21, 1990, when he was one years old. He presently seeks a certificate of citizenship pursuant to sections 309(a) and 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409(a) and 1401(g), based on the claim that he acquired U.S. citizenship at birth through his father.

In a decision dated, May 22, 2013, the director determined that the applicant failed to establish that, prior to his 18th birthday, his U.S. citizen father agreed, in writing, to provide financial support to the applicant until he reached the age of 18. The applicant therefore did not meet section 309(a)(3) of the Act requirements. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that the director erroneously relied on the non-binding judicial decision, *O'Donovan-Conlin v. U.S. Dept. of State*, 255 F. Supp. 2d. 1075 (N.D. Cal. 2003), and that the applicant meets section 309(a)(3) of the Act requirements because a court ordered his father to pay child support until the applicant reached the age of 18. Specifically, counsel states that the Congressional intent behind requiring a father to agree in writing to financially support his child until the age of 18, as set forth in section 309(a)(3) of the Act, was to facilitate the issuance of child support orders, and to ensure that the child did not become a public charge. Counsel asserts that the applicant's child support order "obviated the need for an informal writing from [the applicant's] father promising financial support." The applicant's child support order therefore satisfies the written financial support requirement contained in section 309(a)(3) of the Act. In support of these assertions, counsel submits a copy of the U.S. Supreme Court decision, *Miller v. Albright*, 118 S. Ct. 1428 (1997); an April 1993, Immigration and Naturalization Service (Service), General Counsel opinion; and July 1996 Congressional hearing notes.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The May 22, 2013, director's decision refers to the California District Court decision, *O'Donovan-Conlin v. U.S. Dept. of State*, 255 F. Supp. 2d. 1075 (N.D. Cal. 2003), which held that, because there was no written agreement expressing a promise by an applicant's father to support the child until the age of 18, "a clear, unambiguous requirement of [section 309(a)(3) of the Act]" the applicant failed to establish citizenship under section 309(a) of the Act. See *O'Donovan-Conlin v. U.S. Dept. of State*, 255 F. Supp. 2d at 1983. Counsel correctly asserts that the California District Court decision is not binding case law in the applicant's case.

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 the present matter was born in 1988. Accordingly, section 301(g) of the Act controls his claim to U.S. citizenship.

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

Additionally, because the applicant was born out of wedlock, he must satisfy the legitimation provisions set forth in section 309(a) of the Act, which state, in pertinent part that:

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.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The “preponderance of the evidence” standard requires that the record demonstrate that the applicant's claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

In the present matter, the applicant's birth certificate contains no information regarding his father; however, an August 21, 1989, court order from the District Court, [REDACTED] Germany, reflects that the applicant's father's paternity was established by adjudication of a

competent court. The requirements contained in sections 309(a)(1) and (4)(C) of the Act have therefore been met. The record also contains the applicant's father's birth certificate, reflecting that he was born in California, and is a U.S. citizen. Section 309(a)(2) of the Act requirements have thus also been satisfied.

To establish the section 309(a)(3) of the Act requirement that, prior to the applicant's 18th birthday, his father agreed in writing to provide financial support to the applicant until the age of 18, counsel submits the child support order issued against the applicant's father on August 21, 1989. Counsel asserts that the Supreme Court decision, *Miller v. Albright*, 523 U.S. 420 (1988); an April 26, 1993, Service, General Counsel opinion; and July 1996, Congressional hearing notes establish that the Congressional intent behind requiring a father to agree in writing to financially support his child until the age of 18, was to ensure that the child did not become a public charge, and to facilitate issuance of child support orders. Counsel asserts further that, because the applicant's child support order "obviated the need for an informal writing from [the applicant's] father promising financial support," the child support order satisfies the written financial support requirement contained in section 309(a)(3) of the Act.

We are not persuaded by counsel's assertions. While the evidence submitted by counsel does reflect that, in incorporating section 309(a)(3) requirements into the Act, a goal of Congress was to decrease the chance that a child would become a public charge, and to facilitate the ability to get child support orders against fathers, we note that the *Miller* decision, the Service General Counsel opinion, and the Congressional hearing notes all acknowledge the section 309(a)(3) of the Act requirement that a father agree in writing to financially support his child until the age of 18. Nowhere in the evidence is it stated that a father's written agreement of financial support is not a required element for compliance under section 309(a)(3) of the Act.

The U.S. Supreme Court held in, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1994), that interpretation of statutory language begins with the terms of the statute itself, and if those terms, on their face, constitute a plain expression of congressional intent, they must be given effect. *Id.* at 842-43. We find that the statutory language contained in section 309(a)(3) of the Act clearly states that the U.S. citizen father must agree in writing to financially support his child until the age of 18. In the present matter it is uncontested that the applicant's father made no such written agreement. The applicant has therefore failed to meet the requirements under section 309(a) of the Act. Accordingly, the requirements set forth in section 301(g) of the Act need not be addressed.

Beyond the decision of the director, we also find that the applicant has not derived citizenship under section 320 of the Act, 8 U.S.C. § 1431.

Section 320 of the Act provides, 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.

Here, the record contains no evidence that the applicant resided in the United States in the legal and physical custody of his U.S. citizen father; moreover, the applicant states in a sworn statement to immigration officials, dated January 11, 2012, that he never met his biological father. The applicant therefore failed to satisfy section 320(a)(3) of the Act requirements, and he does not qualify for citizenship under section 320 of the Act.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and the Service lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See INS v. Pangilinan*, 486 U.S. 875, 884-85 (1988) (stating that a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress.) Where an applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has failed to meet his burden of proof. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.