



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 10 2014** OFFICE: LOS ANGELES, CA

IN RE:

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

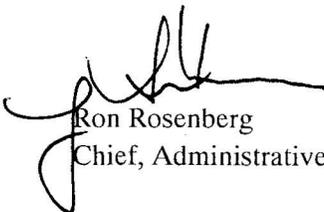
ON BEHALF OF APPLICANT:

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 Director of the Los Angeles, California Field Office (the director) 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.

Pertinent Facts and Procedural History

The applicant was born in Canada on December 24, 1987, and states on the Form N-600 that she was adopted on January 8, 1988, by [REDACTED]. The applicant's adoptive mother, now deceased, was born in the United States on March 8, 1958. Her adoptive father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g) claiming that she acquired U.S. citizenship at birth through her adoptive mother.

The director determined that the applicant was an adopted child and that she failed to establish that she was born to a U.S. citizen, as required under section 301 of the Act. The applicant therefore failed to satisfy the requirements for acquisition of U.S. citizenship. The Form N600 was denied accordingly.

On appeal the applicant asserts, through counsel, that the law where she was adopted considers her to be adopted as of her date of birth. She asserts that a parent-child relationship therefore existed at birth between herself and her adoptive parents, and that pursuant to U.S. Ninth Circuit Court of Appeals (Ninth Circuit) case law set forth in *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000) and *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), a blood relationship between the U.S. citizen parent and the child is not required for acquisition of citizenship under section 301(g) of the Act. She concludes that she therefore acquired U.S. citizenship at birth through her U.S. citizen adoptive mother.

Applicable Law

The AAO reviews these proceedings *de novo*. 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 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 was born in 1987. Section 301(g) of the Act, 8 U.S.C. § 1401(g) is therefore applicable to her case.

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.

The Board of Immigration Appeals held, in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001), that section 301(g) of the Act “requires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child. . . .” The record in the present matter contains the applicant’s Canadian birth certificate, reflecting that the applicant’s father is [REDACTED] and her mother is [REDACTED] born in Pennsylvania, U.S.A; however, it is uncontested that the applicant is the adopted child of [REDACTED]

The applicant asserts that the law where she was adopted considers her to be adopted as of her date of birth, and that a parent-child relationship therefore existed between her and her U.S. citizen adoptive mother since birth. In support of her assertions, the applicant cites Ninth Circuit decisions, *Scales v. INS*, 232 F.3d 1159, *supra* and *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, *supra*, stating that a blood relationship between herself and her U.S. citizen adoptive mother is not required in order to acquire citizenship under section 301 of the Act; however, the reasoning set forth in *Scales* and *Solis-Espinoza* is not applicable to the applicant’s case.

A subsequent Ninth Circuit case, *Martinez-Madera v. Holder*, 559 F. 3d 937 (9th Cir. 2009), clearly reflects the court’s finding that section 301(g) of the Act does not apply to an adopted child. *Martinez-Madera* clarifies that, “[i]n both *Scales* and *Solis-Espinoza*, one of the petitioner’s biological parents was married to a U.S. citizen at the time of the petitioner’s birth.” *Id.* at 940-41 (citations omitted). The Ninth Circuit states further that it agrees with the U.S. Fifth Circuit Court of Appeals (Fifth Circuit) decision, *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir.2006), with regard to section 301 of the Act’s applicability to adopted children. *Id.* In *Marquez-Marquez*, the Fifth Circuit held that:

Section 301 does not address citizenship through adoption, and its text explicitly addresses only citizenship “at birth” (“[t]he following shall be nationals and citizens of the United States at birth”). Moreover, section 301(g) requires that the ‘person’ be ‘born ... of’ a citizen parent, obviously reflecting a relationship *when* ‘born.’

Marquez-Marquez at 556. The Ninth Circuit specifically agreed with this reasoning in *Martinez-Madera*, stating:

a person born of unwed Mexican parents in Mexico did not become a United States citizen by virtue of her later adoption by a United States citizen, who was married

¹ The record does not contain the applicant’s adoption order; however, the applicant states on her Form N-600 that she was adopted on August 8, 1988; she bases her Form N-600 U.S. citizenship claim on her adoptive mother; and counsel states in application cover letters and on appeal that the applicant is the adopted child of a U.S. citizen parent.

to neither of her parents at the time of her birth. Our sister [Fifth] circuit properly distinguished *Scales* and *Solis-Espinoza*, and quoted the following from an unpublished decision of our own circuit: “Crider was born of parents neither of whom were or are citizens of the United States. He could not have been a citizen ‘at birth.’ There is no conceivable way to place him within the reach of § [1401].” *Id.* at 558-559, & n. 22 (quoting *Crider v. Ashcroft*, 74 Fed.Appx. 729-30 (9th Cir.2003)) (unpublished) (citing *I.N.S. v. Pangilinan*, 486 U.S. 875, 108 S.Ct. 2210, 100 L.Ed.2d 882 (1988)).

Martinez-Madera, supra at 942. In the present matter it is undisputed that the applicant was adopted, that she is not the biological child of her adoptive U.S. citizen mother, and that her adoptive mother was not married to the applicant’s birth parent at the time of the applicant’s birth. Accordingly, the applicant has failed to establish that she meets the requirements for acquisition of citizenship under section 301(g) of the Act.

Conclusion

The applicant has not met the requirements of section 301(g) of the Act, or any other provision of law. It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.