

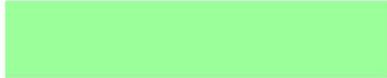


U.S. Citizenship
and Immigration
Services

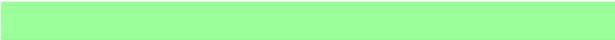
(b)(6)



Date: **JAN 22 2014** Office: PHILADELPHIA, PA



IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 205 of the Nationality Act of 1940, 8 U.S.C. § 605 (1951)

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. 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 Philadelphia, Pennsylvania Field Office Director (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 and the application will remain denied.

Pertinent Facts and Procedural History

The applicant was born out of wedlock on November 17, 1951 in the Dominican Republic to [REDACTED]. The record shows that the applicant's mother was born in the Dominican Republic, but acquired U.S. citizenship at birth through her father, [REDACTED], a U.S. citizen.¹ The applicant's father was a French citizen at the time of the applicant's birth. The applicant entered the United States on May 12, 1993 under the Visa Waiver program and became a lawful permanent resident on August 5, 1993. The applicant seeks a certificate of citizenship, on the basis that he acquired U.S. citizenship at birth through his U.S. citizen mother.

The director denied the applicant's Form N-600, determining that the applicant had not established that he acquired U.S. citizenship at birth through his U.S. citizen mother pursuant to section 205 of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. § 605 (1951), because he failed to show that his mother resided in the United States prior to his birth as required. *See Decision of the Director*, dated July 25, 2013. On appeal, the applicant does not identify any error of fact or law in the director's decision, but newly asserts that he is a U.S. citizen through both his father and mother, because he has learned that his father had been a U.S. citizen as well. No additional evidence was proffered on appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

Applicable Law

The applicable law for transmitting citizenship to a child born abroad to 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 record indicates that the applicant in this case was born in 1951 to one U.S. citizen and one alien parent. Accordingly, section 201(g) of the 1940 Act provides the applicable law. This section stated that the following shall be nationals and citizens of the United States at birth:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten

¹ Although the director's decision indicates that the applicant's mother first applied for a U.S. passport in 1995, her passport application is not part of the record before the AAO. Thus, the AAO is unable to confirm the basis on which the U.S. Department of State, Passport Office, determined that the applicant's mother acquired U.S. citizenship at birth. However, a copy of the face page of the applicant's mother's U.S. passport, issued in 1995 and confirming her U.S. citizenship, is included in the record.

years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

Additionally, because the applicant was born out of wedlock, he must satisfy the provisions set forth in section 205 of the 1940 Act. Section 205 of the 1940 Act provided that specific subsections under section 201, including section 201(g), would apply to a child born out of wedlock if "the paternity is established during minority, by legitimation, or adjudication of a competent court." Alternatively, section 205 of the 1940 Act provided that:

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

Accordingly, to demonstrate acquisition of citizenship under section 205 of the 1940 Act, the applicant must first establish that his paternity was established by legitimation or adjudication of a competent court before his twenty-first birthday on November 17, 1972 to be eligible under section 201(g) of the Act, or he must otherwise demonstrate that his mother was a U.S. citizen who had resided in the United States prior to his birth.

The applicant's birth certificate indicates that his father acknowledged paternity. However, this is insufficient to establish that the applicant's father legitimated the applicant in accordance with the applicable law of the Dominican Republic. *See Matter of Martinez-Gonzalez*, 21 I&N Dec. 1035, 1038-39 (BIA 1997) (holding that a child residing or domiciled in the Dominican Republic qualifies as a legitimated child under section 101(b)(1)(C) of the Act if he or she was under the age of 18 at the time the new legitimation law went into effect in the Dominican Republic in 1995 and paternity was acknowledged before the child's eighteenth birthday, or if he or she was legitimated under the former laws of that country). Further, there is no evidence that the applicant's paternity was established during his minority by adjudication of a competent court in New York or the Dominican Republic. *See* Section 205 of the 1940 Act. Accordingly, the applicant has not established that his citizenship claim falls within section 201(g) of the 1940 Act.²

² Even if the applicant established that he had been legitimated such that his claim falls within section 201 of the 1940 Act, his application must still be denied because as discussed herein, there is no evidence that the applicant's U.S. citizen mother had the requisite ten years of residence in the United States or its outlying possessions as required under that statute. Further, there is no evidence that the applicant's father was a U.S. citizen or ever resided in the United States such that the applicant could acquire citizenship through his father.

As noted, in the absence of legitimation, the applicant may still establish citizenship at birth through his unmarried citizen mother under section 205 of the 1940. However, this claim also fails as there is no evidence that the applicant's mother ever resided in the United States before the applicant's birth as required. In fact, the applicant indicated in his Form N-600 that his U.S. citizen mother's physical presence and residence in the United States only began in October 1995, when the applicant was already 43 years old. Therefore, the applicant did not acquire U.S. citizenship through his mother at the time of his birth.

On appeal, the applicant asserts for the first time that his father was also a U.S. citizen and that he is therefore a U.S. citizen through both his parents. However, the record shows that the applicant's father was a French citizen at the time of the applicant's birth. The applicant has submitted no evidence of his father's alleged U.S. citizenship or admission to the United States as a lawful permanent resident. A search of U.S. Citizenship and Immigration Services (USCIS) records similarly revealed no records matching the applicant's father's information. Accordingly, the applicant has not demonstrated that he derived U.S. citizenship through one or both parents.

Conclusion

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established by a preponderance of the evidence that he met all of the conditions for the acquisition of U.S. citizenship pursuant to section 205 of the 1940 Act. On appeal, the applicant has failed to meet his burden and the appeal will be dismissed.

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