



U.S. Citizenship  
and Immigration  
Services

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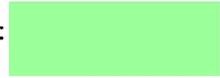


Date:

**JUN 18 2014**

Office: CHICAGO, IL

FILE:



IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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 "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Chicago, Illinois (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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

*Pertinent Facts and Procedural History*

The record reflects that the applicant was born out of wedlock in Germany on August 18, 1958. The applicant's mother, [REDACTED] married [REDACTED] a U.S. citizen, in 1960. The applicant was subsequently adopted by her step-father, and was admitted to the United States as a lawful permanent resident on February 9, 1961.

The director determined, in pertinent part, that the applicant did not derive U.S. citizenship through her adopted father under former section 321 of the Act, 8 U.S.C. § 1432. The director noted that the applicant's mother became a U.S. citizen after the applicant's eighteenth birthday. The application was denied accordingly.

On appeal, the applicant now claims that she acquired U.S. citizenship at birth through her biological father. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The appeal is accompanied by a copy of the applicant's birth certificate, listing [REDACTED] as the applicant's father.

*Applicable Law*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, she 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 applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005).

The applicant is now claiming to have acquired U.S. citizenship at birth. Because the applicant was born in 1958, former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) applies to her case.<sup>1</sup>

Former section 301(a)(7) of the Act stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

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<sup>1</sup> Former section 301(a)(7) of the Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

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

Additionally, because the applicant was born out of wedlock, she would need to satisfy former section 309(a) of the Act, which stated, in pertinent part:

The provisions of . . . section 301(a) . . . shall apply as of the date of birth to a child born out of wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

*Remand*

As noted above, the director considered the applicant's eligibility for U.S. citizenship under former section 321 of the Act based upon the applicant's claim that she derived U.S. citizenship through her adoptive father. Former section 321 of the Act does not provide for derivation of U.S. citizenship other than upon the naturalization of a parent. Additionally, former section 321(b) of the Act, like former section 320(b) of the Act, specifically required that, in the case of adopted children, U.S. citizenship is derived "only if the child is residing in the United States at the time of naturalization of [the parent]." *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2<sup>nd</sup> Cir. 2005). The applicant's adopted father is not a naturalized U.S. citizen. The applicant therefore could not derive U.S. citizenship through her adoptive father.

The applicant now claims that she acquired U.S. citizenship at birth through her biological father. The matter will be remanded to the director to provide the applicant an opportunity to submit evidence that she fulfilled the requirements of former sections 309(a) and 301(a)(7) of the Act. Specifically, the applicant must establish that her paternity was established by legitimation while she was under the age of twenty-one and that her biological father was a U.S. citizen who was physically present in the United States for not less than 10 years prior to her birth. The director will then issue a new decision which, if adverse to the applicant, 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.