



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUN 18 2014**

OFFICE: EL PASO, TX

FILE: [REDACTED]

IN RE: [REDACTED]

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

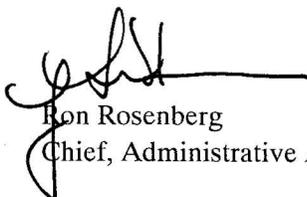
ON BEHALF OF APPLICANT:  
[REDACTED]

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 Director of the El Paso, Texas 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 Chihuahua, Mexico on February 23, 2004. She seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that she acquired U.S. citizenship at birth through her father.

The director determined that the applicant failed to establish that her biological father, [REDACTED] satisfied the requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), for children born out of wedlock; and that the applicant failed to qualify for derivative U.S. citizenship through her U.S. citizen, adoptive mother pursuant to section 320 of the Act, 8 U.S.C. § 1431, because she is not a lawful permanent resident.

On appeal the applicant indicates, through counsel, that during the applicant's adoption proceedings, a Mexican court determined that [REDACTED] is the applicant's biological father; and that, "even though there is no blood relationship between them," she has established that [REDACTED] is her father for acquisition of citizenship purposes. In support of her assertions, the applicant cites to the U.S. Supreme Court case, *Tuan Anh Nguyen v. INS*, 533 U.S. 53 (2001).

*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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant was born in 2006. Section 301(g) of the Act is therefore applicable to her acquisition of U.S. citizenship claim.

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.<sup>1</sup>

Additionally, an applicant born out of wedlock must satisfy the legitimation provisions set forth in section 309(a) of the Act, which states, 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.

The clear and convincing standard of proof requires more than the preponderance of the evidence standard but less than the beyond a reasonable doubt standard. It is a degree of proof which will produce a firm belief or conviction. *See Matter of Patel*, 19 I&N Dec. 774 (BIA 1988).

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), took effect on February 27, 2001, and applies to persons 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 provides, in pertinent part, that:

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<sup>1</sup> Section 301(g) of the Act “requires that the child be born of a United States citizen.” Therefore, an adopted child may not acquire U.S. citizenship pursuant to section 301(g) of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001).

- (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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).<sup>2</sup>

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her 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’r 1989)).

#### Analysis

Regarding her claim that she acquired U.S. citizenship at birth through her father, the applicant indicates on appeal that she satisfies the clear and convincing blood relationship requirements contained in section 309(a)(1) of the Act because a court determined, during her adoption proceedings, that [REDACTED] is her father; and pursuant to the U.S. Supreme Court decision, *Tuan Anh Nguyen v. INS*, *supra*, this is enough to prove the parent-child relationship between herself and [REDACTED]. We are not persuaded by the applicant’s assertions. The applicant points to no specific language in the *Tuan Anh Nguyen* decision to support her assertions. Moreover, a review of the decision reflects that the Supreme Court clearly referred to “the importance of assuring that a biological parent-child relationship exists” when it discussed legitimation requirements under section 309(a) of the Act. *See Tuan Anh Nguyen v. INS* at 53. In the present matter, the record contains no indication that the court independently examined [REDACTED] paternity over the applicant during the applicant’s adoption proceedings.

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<sup>2</sup> Section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E) provides, in pertinent part, that the term “child” means an unmarried person under twenty-one years of age who is:

[A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years[.]

Rather, the record indicates that the adoption proceedings court made its determination regarding [REDACTED] paternity based on paternity information contained in the applicant's delay-issued birth certificate.

The Board of Immigration Appeals addressed the evidentiary weight to be given to a delayed birth certificate in *Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978), indicating that each case is "decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner's birthplace," and that evidentiary value is rebutted by contradictory evidence. Here, the applicant's delay-issued birth certificate has diminished evidentiary weight.<sup>3</sup> Although the birth certificate states that the applicant's father is [REDACTED] the birth certificate contains no information about the applicant's mother, and the birth certificate was registered over two years after the applicant's birth on February 23, 2004. In addition, the record reflects that the director requested evidence explaining the delay in registering the birth certificate and for evidence establishing the blood relationship between the applicant and [REDACTED] however, the applicant failed to respond to such request. Moreover, the paternity information contained in the applicant's delay-issued birth certificate is directly rebutted by the applicant's statement on appeal that, "there is no blood relationship" between herself and [REDACTED]. Accordingly, the applicant has failed to establish, by clear and convincing evidence, that there is a blood relationship between herself and a U.S. citizen father. She therefore does not meet the requirements set forth in section 309(a) of the Act.

Because the applicant has failed to establish the requirements of section 309(a) of the Act, she has also failed to establish, by a preponderance of the evidence, that she meets requirements for acquisition of citizenship as set forth in section 301(g) of the Act.

The applicant has also failed to establish, by a preponderance of the evidence, that she derived U.S. citizenship through her adoptive mother under section 320 of the Act, in that the record contains no evidence to establish that the applicant is residing in the United States in the physical custody of her U.S. citizen mother, pursuant to a lawful admission for permanent residence.

*Conclusion*

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed.

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

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<sup>3</sup> The record also contains a second birth certificate for the applicant, registered on November 10, 2008, after the applicant's adoption, reflecting that the applicant's father is [REDACTED] and that her mother is [REDACTED]