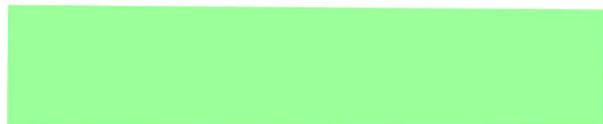




U.S. Citizenship  
and Immigration  
Services

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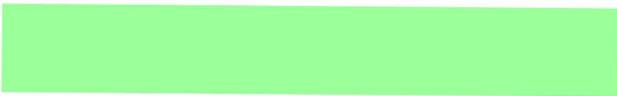


Date: **NOV 10 2014**

Office: NEW YORK, NY

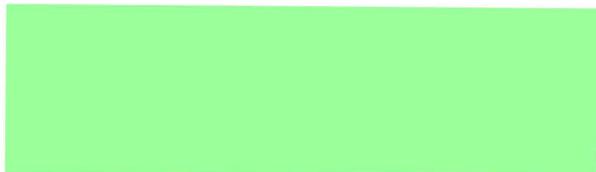
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IN RE:

Applicant: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the New York, New York District Office (the director) denied the Form N-600, Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

*Pertinent Facts and Procedural History*

The record reflects that the applicant was born in Yemen on December [REDACTED]. 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.

In a decision dated August 20, 2013, the director determined that the applicant failed to establish, by a preponderance of the evidence, that she was born to a U.S. citizen parent. She therefore failed to satisfy section 301(g) of the Act acquisition of citizenship requirements. The director determined that the applicant also did not qualify for derivative U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, because she was over the age of 18 on February 27, 2001, when section 320 of the Act went into effect. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that birth certificate and copies of DNA evidence contained in the record establish, by a preponderance of the evidence, that U.S. citizen [REDACTED] is her biological father;<sup>1</sup> that it is unreasonable and unfair to ask the applicant to obtain an original DNA result more than 10 years after the test was done and after her father's death; and that she meets acquisition of citizenship requirements under section 301(g) of the Act. To support her assertions, the applicant submits a delay-issued birth certificate reflecting that she is the child of [REDACTED] a copy of a February 11, 2002 DNA Relationship Analysis Case Report, a delay-issued marriage certificate for [REDACTED], and U.S. Social Security earnings information for [REDACTED]. The applicant does not contest her ineligibility for derivative citizenship under section 320 of the Act and, therefore, we will not further discuss this section of law.<sup>2</sup>

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<sup>1</sup> The record contains [REDACTED] naturalization certificate reflecting that he became a naturalized U.S. citizen on April 30, 1985. He is now deceased.

<sup>2</sup> 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 provides for automatic derivation of U.S. citizenship upon the fulfillment of certain conditions prior to a child's 18th birthday. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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

*Applicable Law*

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). Here, the record reflects that the applicant was born in [REDACTED] Section 301(g) of the Act therefore applies to her claim to U.S. citizenship.<sup>3</sup>

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 burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). 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. See *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*

To support the assertion that she was born on December [REDACTED] to [REDACTED] the applicant submits a Yemeni birth certificate, registered on October 9, 1999, reflecting that her parents are [REDACTED]. She also submits a copy of a DNA Relationship Analysis Case Report from [REDACTED], dated February 11, 2002 (DNA report). The applicant asks us to accept the copy of the February 2002, DNA report as evidence that she is the biological child of [REDACTED] because she is not able to obtain a new DNA report due to her father's death; and she has been unable to obtain her original DNA report, and it may no longer be available.<sup>4</sup>

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<sup>3</sup> Section 301(g) of the Act applies to individuals born on or after November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). (1986 Act). See Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

<sup>4</sup> Email evidence contained in the record reflects counsel's difficulties in obtaining the applicant's original DNA report. The applicant also indicates that the U.S. Department of State (DOS) obtained original

The same evidentiary weight does not attach to a delayed birth certificate, as would attach to one contemporaneous with the actual birth. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). Here, the birth certificate submitted by the applicant has diminished evidentiary weight, in that it was issued 12 years after the applicant's birth, it does not state the basis upon which it was issued, and the record contains no corroborative evidence establishing Mohamed Hamood Shami's paternity over the applicant.

USCIS policy concerning DNA testing allows field offices to suggest DNA testing when initial and secondary forms of evidence have proven inconclusive. *See USCIS Policy Memorandum, PM-602-0106, DNA Evidence of Sibling Relationships for Service Centers, Domestic and International Field Offices* (October 17, 2014):

8 CFR 204.2(d)(2)(v) provides a non-exhaustive list of secondary evidence that may be submitted to establish a parent-child relationship: medical records, school records, religious documents, and affidavits. 8 CFR 204.2(d)(2)(vi) provides authority to require a Blood Group Antigen Test to establish a biological parent-child relationship when other forms of evidence have proven inconclusive. Due to technological advances, however, the Blood Group Antigen Test is no longer routinely performed and many petitioners opt to submit DNA evidence instead . . . . [O]fficers shall not require DNA testing; they may only suggest DNA testing as an optional form of secondary evidence in support of petitions seeking to establish biological parent-child relationships.

If an applicant chooses to submit DNA test results "a 99.5% statistical probability is required to establish parentage." USCIS Policy Memorandum, PM-602-0106, *DNA Evidence of Sibling Relationships for Service Centers, Domestic and International Field Offices* at p.2. In the

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copies of her DNA report when she applied for a U.S. passport in 2005; she has received no response to Freedom of Information Act (FOIA) requests for the evidence from DOS; and U.S. Citizenship and Immigration Services (USCIS) is in the best position to obtain the original DNA evidence from DOS. We note, however, that concerns regarding FOIA information should be directed to the DOS FOIA office, and that the burden of proof is on the claimant to establish her claimed citizenship by a preponderance of the evidence. *See* <https://ogis.archives.gov> and 8 C.F.R. § 341.2(c), respectively. In addition, the applicant asserts that USCIS has issued her siblings certificates of citizenship based on the DNA copy evidence, and that it is unfair not to issue her a certificate of citizenship as well; however, each application filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The applicant indicates further that USCIS failure to accept the copy of her DNA test without providing a reason violates her constitutional due process rights. Our jurisdiction is limited to that authority specifically granted through the regulations at 8 C.F.R. § 103.1 (f)(3)(iii) (as in effect on Feb. 28, 2003). We have no jurisdiction over claims arising pursuant to due process claims.

present matter, the DNA report submitted by the applicant reflects that the test results establish only an 88.8% probability of [REDACTED]'s paternity over the applicant. The results therefore fail to establish the 99.5% probability of paternity required under USCIS DNA policy.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Overall, the evidence fails to establish that the applicant is the biological child of [REDACTED]. The applicant therefore does not meet requirements for acquisition of citizenship under section 301(g) of the Act. We note, however, that the record contains evidence that on June 12, 2006, the applicant was issued a U.S. passport, valid for 10 years. In *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship.

Because the record does not demonstrate the evidentiary basis upon which citizenship was established for U.S. passport purposes, the matter will be remanded to the director to refer the matter to the DOS Passport Office for a review of the applicant's application and a decision on whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, shall certify the decision to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.