



U.S. Citizenship
and Immigration
Services

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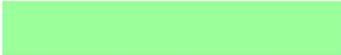


Date: FEB 09 2015

Office: SANTA ANA, CA

FILE: 

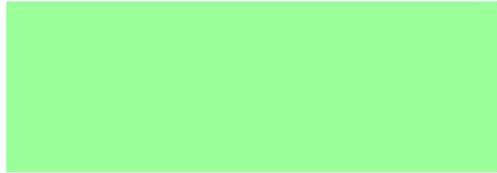
IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under former Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409

ON BEHALF OF APPLICANT:

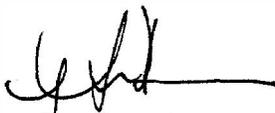


INSTRUCTIONS:

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 Santa Ana, 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 the United Kingdom on [REDACTED]. The applicant's mother, [REDACTED] was married to [REDACTED] at the time of the applicant's birth. The applicant's biological father, [REDACTED], is a U.S. citizen born in Connecticut on [REDACTED]. The applicant's mother divorced [REDACTED] in 1968 and married [REDACTED] a U.S. citizen, in 1971. Mr. [REDACTED] legally adopted the applicant in 1971. The applicant was admitted to the United States as a lawful permanent resident in 1973, based on a visa petition filed by Mr. [REDACTED]. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through [REDACTED], her biological father.

The director found that the applicant did not acquire U.S. citizenship at birth because she could not establish that she was legitimated by [REDACTED]. See *Director's Decision*, dated June 18, 2014. Accordingly, the director concluded that the applicant did not acquire U.S. citizenship at birth pursuant former sections 301(a)(7) and 309(a) of the Act, 8 U.S.C. §§ (a)(7) and 1409(a).¹

On appeal, the applicant maintains that she was legitimated under the law of the State of California, her domicile prior to her 21st birthday. See *Appeal Brief* at 4. Alternatively, she claims that she was legitimated under the law of the State of Connecticut, her father's domicile. *Id.* at 4-5.

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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in [REDACTED]. Former section 301(a)(7) of the Act is applicable to her case and stated, in pertinent part, that the following shall be nationals and 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of

¹ The director also determined that the applicant is ineligible for U.S. citizenship under current and former sections 320, 321, and 322 of the Act, 8 U.S.C. §§ 1431, 1432, and 1433. We agree, and the applicant does not dispute the director's determinations in this regard.

the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.²

Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon proof of legitimation prior to the age of 21. *See* Former section 309(a) of the Act, as in effect prior to 1986.³

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . *and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . .*

(Emphasis added)

Analysis

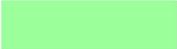
We review these proceedings *de novo*. Our review of the record reveals no error in the director’s decision to deny the instant application for a certificate of citizenship.

Under section 101(c)(1) of the Act, the term *child* for naturalization and citizenship purposes includes a child who is legitimated under the laws of the child or father’s residence or domicile if at the time of legitimation “the child is in the legal custody of the legitimating . . . parent. . . .”

Here, the applicant claims on appeal that she was legitimated either under the laws of California, her place of residence until the age of 21, or in the alternative, under the laws of Connecticut, the place of Mr. [REDACTED] residence. We, however, do not need to address the specific legitimation laws of either California or Connecticut because the applicant was never, at any time, in the legal custody of [REDACTED], her natural father, such that he could have legitimated her under any applicable U.S. state or foreign law as specified in section 101(c) of the Act.

²Former 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.

³Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments further provided, however, that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See* section 13 of the INAA, *supra*. *See also* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.



According to his March 29, 2000 declaration, Mr. [REDACTED] “bought toys and a walker and other items for [the applicant] after she was born” in [REDACTED] and he then left England in 1967, losing touch with the applicant and her mother. In her April 3, 2000 declaration, the applicant’s mother claims that Mr. [REDACTED] visited her and the applicant on a regular basis, helped to provide financial support for the applicant, never denied his paternity of the applicant, and intended to always remain in the applicant’s life as her father despite losing touch with the applicant for many years. Although both Mr. [REDACTED] and the applicant’s mother describe Mr. [REDACTED] presence in the applicant’s life from her birth in [REDACTED] until sometime in 1967, neither individual claims, and the record contains no evidence that, Mr. [REDACTED] ever had legal custody of the applicant at any point in her life while she was under the age of 21 such that he could have legitimated her under any applicable U.S. state or foreign law. Consequently, the applicant cannot establish that she is a *child* as defined in section 101(c) of the Act and her claim to U.S. citizenship must fail on this basis alone.

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, that burden has not been met as to his eligibility for a certificate of citizenship.

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