



**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE:

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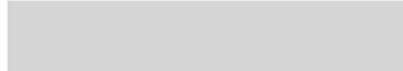
FILE #:



APPLICATION RECEIPT #:



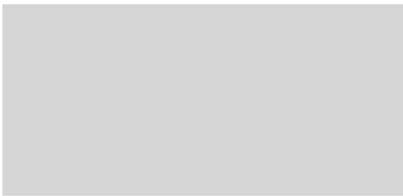
IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 201 of the Nationality Act of 1940, 8 U.S.C. § 601 (1945).

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Durham, North Carolina denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on [REDACTED] in France. The applicant's mother is a native of France and naturalized as a U.S. citizen on June 15, 1956. The applicant's mother married a U.S. citizen on March 5, 1954.

The Field Office Director found that the applicant failed to establish that his stepfather is his biological father, and therefore did not acquire citizenship through him. *See Decision of the Field Office Director*, dated August 12, 2014. The application was denied accordingly. *Id.* On appeal, the applicant claims through counsel that he was legitimized by his U.S. citizen stepfather under French law and therefore adoption was not necessary. *See Form I-290B, Notice of Appeal*, signed September 9, 2014; *Brief in Support of Appeal*.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). The applicant in this case was born in [REDACTED]. Accordingly, section 201 of the 1940 Act is applicable in this case.

During an interview conducted on June 13, 1955, the applicant's mother admitted in a sworn statement that the applicant's stepfather was not the applicant's biological father. At that same interview, the applicant's stepfather was also questioned as a witness and indicated that he was not the "blood father" of the applicant.

Section 201(g) of the 1940 Act states 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 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...

Section 201(g) of the Nationality Act of 1940 required a biological parent-child relationship in order for a child to acquire citizenship at birth through the U.S. citizen parent.¹ *See* 7 Foreign Affairs Manual (FAM) 1131.2 (stating that since 1790 there has been a requirement that "[a]t least one *natural* parent must have been a U.S. citizen when the child was born") (emphasis in original) and 7

¹ It is noted that the present matter is also distinguishable from the situations presented in the U.S. Ninth Circuit Court of Appeals cases, *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000) and *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), in which the court essentially found that a blood relationship need not be established for section 309 of the Act, transfer of citizenship cases, when the child is born during the natural parent and U.S. citizen stepparent's marriage, and thus not "out of wedlock." In the present case, the applicant was born out of wedlock, but four years before his mother's marriage to the applicant's stepfather.

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NON-PRECEDENT DECISION

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FAM 1131.4 (stating that “[a]bsent a blood relationship between the child and the parent) on whose citizenship the child's own claim is based, U.S. citizenship is not acquired”). Here, the record indicates that the applicant’s stepfather was not the applicant's biological father. Accordingly, the applicant did not acquire citizenship through his stepfather under these statutory provisions. The decision of the director denying the application will be affirmed.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.