



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

JUN 12 2015

FILE #:

APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION:

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

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 read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant was born in the United Kingdom on [REDACTED]. The applicant's parents were married at the time of her birth. Her mother was born in the United States on [REDACTED]. Her biological father was a British citizen. The applicant's parents were divorced in [REDACTED]. On [REDACTED] the applicant was adopted by a U.S. citizen, whom her mother married on [REDACTED]. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth.

The Field Office Director found that the applicant did not acquire U.S. citizenship under section 301(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c) as both her parents were not U.S. citizens at the time of her birth. The Field Office Director further found the applicant not eligible to acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as the applicant was over the age of eighteen on [REDACTED]. The Field Office Director denied the applicant's Form N-600, Application for Certificate of Citizenship, accordingly. *See Decision of the Field Office Director*, dated August 28, 2014.

On appeal, the applicant asserts that she is the child of two U.S. citizen parents based upon her mother's and adoptive father's U.S. citizenship. The applicant further contends that the Field Office Director incorrectly applied its own regulations and policy in failing to issue a Notice of Intent to Deny prior to the denial of the application.

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 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 Field Office Director determined the applicant is not eligible for a Certificate of Citizenship under section 320 of the Act, 8 U.S.C. § 1431, as she was born before [REDACTED] and was over the age of eighteen on [REDACTED]. The applicant does not contest her ineligibility for acquired citizenship under section 320 of the Act.

The applicant asserts that she is the child of two U.S. citizens by birth, as her mother was born in New Jersey and her adoptive father was born in Texas. As such, the applicant contends that she is a U.S. citizen pursuant to section 301(c) of the Act.

Section 301 of the Act states that the following shall be nationals and citizens of the United States at birth:

- (c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or its outlying possessions, prior to the birth of such person;

Section 301(c) of the Act allows for the acquisition of U.S. citizenship at birth by children born of U.S. citizens if certain qualifications are satisfied. It does not, however, apply to adopted children, as such children are not “born . . . of” U.S. citizens. See *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006).

The Board of Immigration Appeals (BIA) and Ninth Circuit Court of Appeals also determined that section 301 of the Act does not apply to adopted children in the context of section 301(g) of the Act, also relevant to section 301(c) of the Act insofar as both are subsections of Section 301, Nationals and Citizens of the United States at Birth, and contain the same “born...of parents” language.

The Board of Immigration Appeals held, in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001), that section 301(g) of the Act “requires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child. . . .”

A Ninth Circuit case, *Martinez-Madera v. Holder*, 559 F. 3d 937 (9th Cir. 2009), also contains the court’s finding that section 301(g) of the Act does not apply to an adopted child. *Martinez-Madera* clarifies that, “[i]n both *Scales* and *Solis-Espinoza*, one of the petitioner’s biological parents was married to a U.S. citizen at the time of the petitioner’s birth.” *Id.* at 940-41 (citations omitted). The Ninth Circuit states further that it agrees with the U.S. Fifth Circuit Court of Appeals (Fifth Circuit) decision, *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006), with regard to section 301 of the Act’s applicability to adopted children. *Id.* In *Marquez-Marquez*, the Fifth Circuit held that:

Section 301 does not address citizenship through adoption, and its text explicitly addresses only citizenship “at birth” (“[t]he following shall be nationals and citizens of the United States at birth”). Moreover, section 301(g) requires that the ‘person’ be ‘born ... of’ a citizen parent, obviously reflecting a relationship when ‘born.’

Marquez-Marquez at 556. The Ninth Circuit specifically agreed with this reasoning in *Martinez-Madera*, stating:

a person born of unwed Mexican parents in Mexico did not become a United States citizen by virtue of her later adoption by a United States citizen, who was married to neither of her parents at the time of her birth. Our sister [Fifth] circuit properly distinguished *Scales* and *Solis-Espinoza*, and quoted the following from an unpublished decision of our own circuit: “Crider was born of parents neither of whom were or are citizens of the United States. He could not have been a citizen ‘at birth.’ There is no conceivable way to place him within the reach of § [1401].” *Id.* at 558-559, & n. 22 (quoting *Crider v. Ashcroft*, 74 Fed.Appx. 729-30 (9th Cir.2003)) (unpublished) (citing *I.N.S. v. Pangilinan*, 486 U.S. 875, 108 S.Ct. 2210, 100 L.Ed.2d 882 (1988)).

In the present matter it is undisputed that the applicant was adopted at the age of [REDACTED] that she is not the biological child of her adoptive U.S. citizen father, and that her adoptive father was not

married to the applicant's birth parent at the time of the applicant's birth. Accordingly, the applicant has failed to establish that she meets the requirements for acquisition of citizenship under section 301(c) of the Act.

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 on [REDACTED]. We have determined that at the time of the applicant's birth, only one of her parents was a U.S. citizen. Therefore, former section 301(g) of the Act, 8 U.S.C. § 1401(g), is applicable to his case.

Former section 301(g) of the Act stated 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 the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of the statute remained the same after the 1978 re-designation. The Immigration and Nationality Act Amendments of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986), enacted November 14, 1986, amended section 301(g), which now requires an applicant to establish that his or her U.S. citizen parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, rather than for ten years as previously required. Current section 301(g) of the Act is inapplicable here because it applies only to individuals born on or after the 1986 enactment date. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

Former section 301(g) of the Act requires that the applicant establish that her mother was physically present in the United States for at least ten years prior to her birth on [REDACTED], and that at

least five of these years were after her mother's [REDACTED]

There is no evidence in the record to establish that the applicant's mother had the required physical presence in the United States prior to the applicant's birth. According to the brief submitted by applicant's counsel, dated September 26, 2014, the applicant's mother resided in the United States from the time of her birth in [REDACTED] until she moved to England with her mother in 1958.

The Field Office Director stated that the applicant's mother did not have the required physical presence in the United States to transmit U.S. citizenship to the applicant, and referenced a U.S. Department of State determination dated May 20, 1996 that stated the applicant's mother did not have the required 10-year physical presence in the United States. On appeal, counsel for the applicant contends that, pursuant to USCIS policy and regulation, if a decision adverse to an individual is based on derogatory information and the individual is unaware that the information is being considered, the officer must advise the individual of this information and offer him or her an opportunity to rebut it before the decision is rendered, citing 8 C.F.R. § 103.2(b)(16)(i).

We note that the information in the U.S. Department of State determination refers to the applicant's mother, so is not derogatory information concerning the applicant. We further note that the letter from the Vice Consul at the U.S. Consulate in [REDACTED] was mailed to the applicant's mother at her address in Germany on May 20, 1996. Accordingly, the record reflects that the applicant's mother was aware of the information included in that determination. In addition, we note that the Field Office Director provided the applicant with a request for evidence on April 29, 2014 following the applicant's interview at the Denver Field Office, requesting that the applicant provide proof regarding the physical presence in the United States of her U.S. citizen parent.

Despite the insufficiency in the record concerning evidence of the applicant's mother's physical presence, as noted in the request for evidence and in the decision of the Field Office Director, no further information or evidence of physical presence has been submitted to the record. The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. The instructions for filing the Form I-290B, Notice of Appeal or Motion, state that the applicant may submit a brief and/or additional evidence at the time of initial filing of the Form I-290B or within 30 days of filing. As no additional evidence was received by the AAO within 30 days of filing the Form I-290B, the record is considered complete. Absent any evidence that the applicant's mother was physically present in the United States for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years, we find that the applicant did not acquire U.S. citizenship pursuant to section 301(g) of the Act, and that the Certificate of Citizenship was properly denied.

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.

ORDER: The appeal is dismissed.