U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-B-M-C-

DATE: AUG. 10, 2016

APPEAL OF SAN FRANCISCO, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Canada, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) sections 301(g), 309(a), 8 U.S.C. §§ 1401(g), 1409(a), *amended by* Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655. *See also* section 322 of the Act, 8 U.S.C. § 1433. An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship.

An individual, born outside the United States, claiming to be a U.S. citizen at birth, and who was born to unmarried parents on or after November 14, 1986, and is claiming citizenship through a U.S. citizen father, may apply to receive a Certificate of Citizenship under sections 301(g) and 309(a) of the Act. The father must have been physically present in the United States for 5 years (2 of which occurred after the age of 14) before the individual's birth, and the individual must also satisfy legitimation requirements. Alternatively, under section 322 of the Act, a U.S. citizen parent may apply for a Certificate of Citizenship on behalf of a child residing outside the United States if the child is residing in the U.S. citizen parent's custody, and that parent had been physically present in the United States for 5 years, 2 of which were after the parent turned 14 years old.

The Applicant filed the Form N-600, Application for Certificate of Citizenship, on October 2, 1997. The legacy Immigration and Naturalization Service (legacy INS) subsequently sent a letter to the Applicant requesting that she submit additional evidence and appear for an interview on her application in June 1998.[1] The Applicant did not respond to the request for evidence and did not appear for the interview. Accordingly, her application was administratively closed in August 1998. The matter was reopened in 2014, pursuant to a U.S. Citizenship and Immigration Services (USCIS) motion to reopen, after the Applicant appeared at the USCIS Field Office in San Francisco, California and requested that her application be reopened.

[1] The Homeland Security Act of 2002 (Pub. L. No. 107–296, 116 Stat. 2135) dismantled and separated the legacy INS into 3 components within the Department of Homeland Security (U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, and Customs and Border Protection). On March 1, 2003, U.S. Citizenship and Immigration Services assumed responsibility for the immigration service functions of the legacy INS. *See* https://www.uscis.gov/about-us/our-history.

The Field Office Director, San Francisco, California, denied the application on October 7, 2015. The Director concluded that the Applicant did not demonstrate that her father satisfied the written financial support requirement set forth in section 309(a) of the Act, or the U.S. physical presence requirements contained in section 301(g) of the Act for acquisition of citizenship at birth. The Director determined that the Applicant also did not satisfy conditions for derivative citizenship under section 322 of the Act because she did not establish that her father was physically present in the United States for the required period of time, and because the Applicant was then over the age of 18 and no longer eligible to receive a Certificate of Citizenship under this section of the Act.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in denying her application. The Applicant states that at the time of filing, she was eligible to derive citizenship from her father under section 322 of the Act. She indicates that the legacy INS lost her application, did not notify her of the status of her case, and violated her procedural due process rights, and that her application should therefore be approved pursuant to section 322 of the Act on equity grounds. In addition, the Applicant asserts that the passage of time made it difficult to obtain evidence demonstrating her father's physical presence in the United States prior to her birth, and she asks that her case history be taken into consideration when evaluating evidence for section 301(g) of the Act purposes.

The Applicant also requests an indefinite period of time to submit additional evidence in support of her appeal; however, the regulations do not allow for an open or indefinite period in which to supplement an appeal. *See* 8 C.F.R. § 103.3(a)(2)(i) ("the affected party must submit the complete appeal . . . within 30 days after service of the decision.")

Upon *de novo* review, we will dismiss the appeal. The Applicant is ineligible to receive a Certificate of Citizenship under section 322 of the Act due to her age, and she has not satisfied the written financial support or legitimation requirements set forth in section 309(a) of the Act, or the U.S. physical presence requirements contained in section 301(g) of the Act.

I. LAW

The record reflects that the Applicant was born on [redacted] in Canada to unmarried parents, a U.S. citizen father and a Canadian citizen mother. The Applicant's parents did not subsequently marry, and the Applicant's father obtained sole custody over the Applicant in Alberta, Canada on [redacted] 1993. The Applicant seeks a Certificate of Citizenship indicating that she derived U.S. citizenship from her father pursuant to section 322 of the Act, or alternatively, that she acquired U.S. citizenship through her father at birth pursuant to sections 301(g) and 309(a) of the Act.

Section 322 of the Act applies to derivative citizenship of children born and residing outside of the United States. It provides:

> (a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The [Secretary of Homeland Security] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [Secretary], that the following conditions have been fulfilled:
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> > (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.
> >
> > (2) The United States citizen parent--
> >
> > > (A) has . . . been 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; or
> > >
> > > (B) has . . . a citizen parent who has been 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.
> >
> > (3) The child is under the age of eighteen years.
> >
> > (4) The child is residing outside of the United States in the legal and physical custody of the [citizen parent] . . . .
> >
> > (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.
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> (b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

The applicable law for transmitting citizenship at birth 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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

As stated previously, the Applicant was born on [redacted] to a U.S. citizen father and a foreign national mother. Accordingly, her acquisition of citizenship at birth claim falls within the provisions of section 301(g) of the Act, which provides, in pertinent part that the following shall be nationals and citizens of the United States at birth:

> (g) 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 . . . .

Because the Applicant was born out of wedlock, she must also satisfy the requirements of section 309(a) of the Act, which pertain to legitimation. Section 309(a) of the Act states, in relevant part:

> 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-
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> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
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> (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.

II. ANALYSIS

The issue in this case is whether the Applicant has established that she derived U.S. citizenship from her father under section 322 of the Act, or alternatively that she acquired citizenship through him at birth pursuant to sections 309(a) and 301(g) of the Act. On appeal, the Applicant asserts that she was eligible for derivative citizenship under section 322 of the Act when she initially filed her citizenship application in 1997, but that the legacy INS lost her application and did not notify her of the status of her case despite numerous inquiries by her father. She contends that her procedural due process rights were violated, and that her application should be approved pursuant to section 322 of the Act on equity grounds. The Applicant claims, alternatively, that she acquired citizenship at birth through her father under sections 309(a) and 301(g) of the Act. She indicates, however, that because

so many years have passed since she initially filed her application, it is now difficult to obtain evidence demonstrating her father's physical presence in the United States prior to her birth. The record includes a letter from the Applicant's father, affidavits from friends, and Alaska vehicle title and registration documentation.

The entire record has been reviewed and considered. We find, upon review, that the Applicant has not demonstrated that she derived citizenship through her father after birth, that she acquired citizenship from her father at the time of her birth, or that she is eligible for citizenship on an equitable basis.

A. Derivative citizenship under section 322 of the Act

The record reflects that the Applicant turned on 2007. Because the Applicant is over the age of 18, she does not meet the section 322(a)(3) of the Act requirement that she be under the age of 18. She is also unable to meet the age and oath of allegiance conditions set forth in section 322(b) of the Act. Accordingly, the Applicant is ineligible for issuance of a Certificate of Citizenship under section 322 of the Act.

The Applicant contends, nevertheless, that she is eligible for section 322 of the Act derivative citizenship based on due process and equity grounds. She states that she met all section 322 requirements when her father filed her application in 1997, and that legacy INS processing delays related to the loss of her file caused her to turn 18 before her application was processed. To corroborate her claim, the Applicant submits a letter from her father indicating that he filed the Applicant's citizenship application when he moved to the United States in 1997; however, he did not receive a response. He indicates further that he contacted the legacy INS numerous times over the next several years, but was always told that the Applicant's file was archived and that he should follow up later.

We have no jurisdiction over unreasonable delay claims under the Act or constitutional due process claims. *See generally,* 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). Estoppel is an equitable form of relief that is available only through the courts, and we, like the Board of Immigration Appeals, are without authority to apply the doctrine of equitable estoppel. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Furthermore, the record does not support the Applicant's unreasonable delay assertions. The evidence reflects that in 1998, the legacy INS sent a letter to the Applicant at her address of record, requesting that she appear for a June 1998 interview on her citizenship application. The application was subsequently administratively closed in August 1998 after the Applicant did not appear for her interview. The record contains no evidence of case status inquiries by the Applicant's father, and the first evidence of contact by the Applicant was responded to when USCIS reopened the matter upon the Applicant's request in September 2014. Therefore, based on the record, it does not appear that the legacy INS unreasonably delayed the processing of the Applicant's application.

In addition, the record does not demonstrate that the Applicant met the requirements for issuance of a Certificate of Citizenship under section 322 of the Act when her application was filed in 1997. The Applicant's father stated in his letter that he lived in the United States after filing the Applicant's citizenship application. The Applicant therefore did not demonstrate that she resided outside of the United States in the legal and physical custody of her U.S. citizen parent, as required in section 322(a)(4) of the Act. The record also lacks evidence demonstrating that the Applicant was temporarily present in the United States pursuant to a lawful admission, as required under section 322(a)(5) of the Act.

Strict compliance with statutory prerequisites is required to derive or acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981). Here, the Applicant has not established that she is eligible for issuance of a Certificate of Citizenship pursuant to section 322 of the Act.

B. Acquisition of Citizenship pursuant to sections 301(g) and 309(a) of the Act

As previously stated, the Applicant was born on to a U.S. citizen father and a foreign national mother who were not married. To establish acquisition of U.S. citizenship at birth under these circumstances, the Applicant must show that her father was a U.S. citizen who was physically present in the United States for 5 years before the Applicant's birth, at least 2 years of which were after the father's 14th birthday on 1976. In addition, because the Applicant was born out of wedlock, she must demonstrate that there is a blood relationship between her and the father, that the father agreed to financially support the Applicant until the age of 18, and that he either legitimated the Applicant or acknowledged paternity of the Applicant, or that paternity was established by adjudication of a competent court before the Applicant's birthday in 2007.

Birth certificate evidence for the Applicant demonstrates the Applicant's blood relationship to her father, and birth certificate evidence for the Applicant's father demonstrates his U.S. citizenship at the time of the Applicant's birth. The Applicant therefore satisfied the conditions set forth in section 309(a)(1) and (a)(2) of the Act. The record, however, contains insufficient evidence to establish that the legitimation requirements set forth in section 309(a)(3) and (a)(4) of the Act have been met.

The statutory language contained in section 309(a)(3) of the Act clearly requires the Applicant to demonstrate that her father agreed in writing to provide financial support for the Applicant until she reached the age of 18. Here, the record lacks any evidence demonstrating that the Applicant's father agreed in writing to provide financial support to the Applicant until the age of 18. The financial support requirement set forth in section 309(a)(3) of the Act has therefore not been met.

In addition, although the record contains a 1994, Court of Queen's Bench of Alberta, custody order stating that it was in the Applicant's best interest to be placed in custody, the court did not make a specific finding with regard to his paternity over the Applicant. The custody order is therefore insufficient to demonstrate that the Applicant's paternity was established by adjudication of a competent court, as required in section 309(a)(4)(C) of the Act. The record also contains no evidence to demonstrate that the Applicant's father

acknowledged paternity over the Applicant in writing under oath prior to her birthday in 2007, as discussed in section 309(a)(4)(B) of the Act. Lastly, the Applicant submitted no evidence to demonstrate that she was legitimated under the law in Canada, or in another place of residence or domicile prior to her 18th birthday, as required under section 309(a)(4)(A) of the Act. Accordingly, the Applicant does not meet requirements under section 309(a)(4) of the Act.

Even if the Applicant had established that she satisfied all section 309(a) of the Act requirements, she would have established her eligibility for acquisition of citizenship under section 301(g) of the Act, in that the record contains insufficient evidence to demonstrate that her father was physically present in the United States for 5 years before the Applicant's birth, on at least 2 of which were after the father's 14th birthday on

The record contains the Applicant's father's birth certificate reflecting that he was born in Montana in and a letter from the Canada Immigration Center indicates that he moved to Canada on October 22, 1966, when he was 5 years old. At best, this evidence establishes that the Applicant's father was physically present in the United States for 5 years prior to his 14th birthday. The totality of the evidence in the record is insufficient, however, to demonstrate that the Applicant's father was physically present in the United States for at least 2 years after his 14th birthday in and prior to the Applicant's birth in

Although the record contains Alaska vehicle title and registration documentation indicating that the Applicant's father maintained a residence in Alaska, in 1984, this evidence establishes, at best, that the Applicant's father was physical present in the United States for up to 1 year in 1984.

The record also contains a letter from the Applicant's father and affidavits from 3 of his friends. The Applicant's father states in his letter that he lived and worked with his uncle in Arkansas, and that he was in Alaska in his early 20s. A friend states that she met the Applicant's father in spring 1983 when he worked in Alaska, that they dated briefly in the summer of 1983, and that the Applicant's father resided in Alaska until the winter of 1985/1986. Another friend states that the Applicant's father lived in Alaska in 1984 and 1985. The record, however, lacks independent documentary evidence to corroborate the claims that the Applicant's father was physically present in the United States prior to, or after 1984. Moreover, the statements by the Applicant's father and his friends are vague and do not specify dates or addresses where the Applicant's father lived and worked in the United States. They also lack detail regarding the Applicant's father's activities and interactions between the affiants and the Applicant's father during the claimed time periods. An additional affidavit from a high school friend describes activities with the Applicant's father in Canada, but lacks evidence of personal knowledge of the Applicant's father's presence in the United States.

Upon review, the evidence in the record establishes, at best, that the Applicant's father was physically present in the United States for up to 1 year in 1984. The evidence is insufficient, however, to demonstrate that the Applicant's father was physically present in the United States for at least 2 years after he turned 14.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that she satisfied conditions for issuance of a Certificate of Citizenship under section 322 of the Act. She also did not establish that her father satisfied legitimation-related requirements set forth in section 309(a) of the Act, or U.S. physical presence requirements contained in section 301(g) of the Act. She also did not show that she is eligible for citizenship on an equitable basis.

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, the Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-B-M-C-*, ID# 16970 (AAO Aug. 10, 2016)