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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-N-D-L-

DATE: DEC. 22, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 301(a)(7), 8 U.S.C. § 1401(a)(7), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046; section 309(a), 8 U.S.C. § 1409(a), *amended by* Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655. 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. For an individual claiming to be a U.S. citizen at birth, who was born to unmarried parents between December 24, 1952, and November 14, 1986, and is claiming citizenship through a U.S. citizen father, the father must have been physically present in the United States for 10 years (with at least 5 years occurring after the age of 14) before the individual's birth and the individual must also satisfy legitimation requirements.

The Field Office Director, San Antonio, Texas, denied the application. The Director concluded that the Applicant did not establish she acquired U.S. citizenship at birth, because she had not shown a biological relationship between her and the U.S. citizen she claimed was her father, and she had not demonstrated that he legitimated her and agreed in writing to provide financial support for the Applicant until her 18th birthday. We dismissed the Applicant's appeal. Although we found that the evidence the Applicant submitted established a blood relationship between the Applicant and her father, we determined that the Applicant did not acquire U.S. citizenship at birth because she was not legitimated or acknowledged by her father in accordance with the applicable law in Mexico, or in Texas. Further, there was no evidence that the father agreed in writing to financially support the Applicant until she reached the age of 18. The Applicant subsequently filed a motion to reopen and reconsider our decision. We granted the motion to reconsider, but affirmed our finding that the Applicant did not acquire U.S citizenship at birth pursuant to former section 301(a)(7) of the Act because she did not satisfy the legitimation provisions of section 309(a) of the Act, which apply to children who, like the Applicant, were born out of wedlock. In our decision on motion, we explained that the Applicant did not meet the requirements of section 309(a) of the Act in effect prior to November 14, 1986, because she was not legitimated by her father, and that she also did not meet the provisions of the amended section 309(a) of the Act because she presented no evidence to show that her father agreed in writing to support her financially. Finding the Applicant statutorily ineligible for acquisition of U.S. citizenship at birth from her father on that basis, we did not address the father's physical presence in the United States required under former section 301(a)(7) of the Act.

The matter is now before us on a subsequent motion to reopen. On motion, the Applicant submits a notarized statement from her half-sister and a copy of a decision issued by the U.S. Court of Appeals for the Second Circuit (Second Circuit), *Lake v. Reno*, 226 F.3d 141 (2000). The Applicant asserts that this is new evidence relevant to establishing her U.S. citizenship claim. Specifically, the Applicant states that the letter from her half-sister, as well as the previously submitted DNA test results establish that she and the half-sister have the same U.S. citizen father. In addition, the Applicant claims that because the Second Circuit held that the gender-based distinction mandated by section 309(a) of the Act violates the right to equal protection secured by the Due Process Clause of the Fifth Amendment of the U.S. Constitution, she should be recognized as a U.S. citizen regardless of whether she meets section 309(a) of the Act requirements. Finally, the Applicant requests oral argument, stating that that because her case arises in the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) but her due process claim is based on the Second Circuit decision, she would like to adequately address any questions regarding the constitutional argument she presents.

The regulations provide that a party requesting oral argument must explain in writing specifically why oral argument is necessary. 8 C.F.R. § 103.3(b)(1). We may grant such a request when we determine that a case involves an issue of particular significance, which might benefit from supplemental argument. In this instance, the Applicant has not identified unique factors or issues of law to be resolved, and we find that the written record of proceedings fully represents the relevant facts in this matter. Accordingly, we deny the Applicant's request for oral argument.

Furthermore, we will deny the motion to reopen.

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .

In addition, the regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part:

> *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed.

II. ANALYSIS

In our previous decisions, we addressed the requirements of former and current section 309(a), which must be satisfied in order for an individual born out of wedlock to establish acquisition of U.S. citizenship at birth from a U.S. citizen father. We found that the Applicant did not satisfy these

requirements, because she did not present evidence that she was legitimated by her father, or that he agreed in writing to provide financial support for the Applicant. The Applicant does not contest this finding in the instant motion to reopen. Rather, the Applicant claims because she demonstrated that her father was a U.S. citizen who was physically present in the United States for the requisite time period before her birth, and the Second Circuit determined that the requirements of section 309(a) of the Act violated the equal protection rights guaranteed under the U.S. Constitution, her claim to acquisition of U.S citizenship at birth should be recognized.

Upon review, we find that the Applicant has not presented new facts or evidence that would warrant reopening of her case. Even though the Applicant did not also file a motion to reconsider, we nevertheless also find that she has not identified any precedent decisions or misapplication of law or U.S. Citizenship and Immigration Services policy sufficient to overcome a determination that she did not derive U.S. citizenship former section 301(a)(7) of the Act. Finally, we lack jurisdiction to consider the Applicant's claim on motion that the provisions of section 309(a) of the Act relating to legitimation are unconstitutional and should not be applied in her case. As the motion does not meet the applicable requirements, we must deny it pursuant to 8 C.F.R. § 103.5(a)(4).

A. Letter from the Applicant's Half-Sister

While in support of the motion the Applicant submitted a letter from her half-sister, the letter does not provide new facts or information. In her letter, the Applicant's half-sister states that she and the Applicant share the same father, and that they have developed a close relationship despite a significant age difference. The half-sister claims that her uncle and his sons were aware that the father had family in Mexico, but they are now deceased an unable to testify on the Applicant's behalf. She asks that the Applicant be allowed to remain in Texas with her children. We acknowledge the statements of the Applicant's half-sister. We have previously recognized the claimed biological relationship between the Applicant and her U.S. citizen father, documented by the DNA test results and by the earlier affidavit the half-sister executed on the Applicant's behalf. However, as we have explained in our previous decisions, biological relationship alone is insufficient to satisfy the requirements of section 309(a) of the Act, which also requires additional criteria pertaining to legitimation before an individual may establish acquisition of U.S. citizenship from his or her father. This letter does not overcome our determination that she does not meet the requirements of either old or amended section 309(a) of the Act, and nor does it introduce new information on that issue. As such, the letter does not satisfy the requirements of a motion to reopen set forth in 8 C.F.R. § 103.5(a)(2).

B. The Second Circuit Decision

We also find that the Applicant's reliance on the Second Circuit decision to establish her U.S. citizenship claim is misplaced. In *Lake v. Reno*, *supra*, the Second Circuit held that the provisions of section 309(a), which apply only to children of unmarried U.S. citizen fathers, but not unmarried U.S. citizen mothers, violated the Equal Protection Clause of the U.S. Constitution. The court found that because section 309(a) of the Act was unconstitutional, an individual born abroad out of

wedlock to a U.S. citizen father acquired U.S. citizenship at birth from the father pursuant to former section 301(a)(7) of the Act, despite the fact that the individual had not satisfied the requirements of section 309(a) of the Act. However, *Lake v. Reno* was vacated by the United States Supreme Court[1] in light of its decision in *Nguyen v. INS*, 533 U.S. 53 (2001). In *Nguyen*, the Supreme Court held that section 309(a) of the Act was constitutional. The Supreme Court explained that the differential treatment of unmarried mothers and unmarried fathers in the context of citizenship proceedings "serves important governmental objectives and . . . [is] substantially related to the achievement of those objectives." *Id.* at 61 (quoting *United States v. Virginia*, 518 U.S. 515, 533, (1996)) (internal quotation marks omitted). The Supreme Court further clarified that section 309(a) of the Act serves the important government interests of "assuring that a biological parent-child relationship exists," and "ensuring that such an opportunity, inherent in the event of birth as to the mother-child relationship, exists between father and child before citizenship is conferred upon the latter." *Id.* at 62, 66.

We are bound by the Act, agency regulations, precedent decisions of the agency, decisions of the United States Supreme Court, and published decisions from the circuit court of appeals where the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987). The Applicant's proceedings fall within the jurisdiction of the Fifth Circuit, which held, following the Supreme Court's reasoning in *Nguyen*, *supra*, that differential treatment in immigration laws based on legitimacy rationally serves the purpose of protecting parental rights. *See Ayton v. Holder*, 686 F.3d 331,338 (5th Cir. 2012) (holding that former section 321(a)(3) of the Act, 8 U.S.C § 1432(a)(3), did not violate equal protection based on legitimacy, because the government has a rational basis for differentiating between legitimated and non-legitimated children for the purposes of conferring derivative citizenship).

In light of the fact that the Second Circuit decision, on which the Applicant relies in the instant motion, has been vacated by the Supreme Court, and the Supreme Court ruled that section 309(a) was constitutional, we find no basis for reopening of the Applicant's case.

C. Constitutional Issue

A discussed above, the Supreme Court upheld the constitutionality of section 309(a) of the Act, and the Fifth Circuit followed the Supreme Court's reasoning in finding that differential treatment of legitimated and non-legitimated children did not violate the Equal Protection Clause. We lack jurisdiction to independently decide on the constitutionality of section 309(a) raised by the Applicant in the instant motion. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997) (like the Board of Immigration Appeals, we do not have appellate jurisdiction over constitutional issues). Our review is limited to determination of whether the Applicant has established that she meets the applicable requirements of section 309(a) of the Act in order to acquire U.S. citizenship from her father pursuant to former section 301(a)(7) of the Act. On that issue, we affirm that the record does not demonstrate that the Applicant satisfies the conditions in either old or amended section 309(a) of

[1] *See Ashcroft v. Lake*, 533 U.S. 913 (U.S. 2001).

the Act. Furthermore, the Applicant has not submitted any evidence with the instant motion that would warrant a departure from this finding or reopening of these proceedings.

III. CONCLUSION

Based on the foregoing, we affirm our previous determination that the Applicant did not derive citizenship under section 301(a)(7) of the Act, because she has not demonstrated that she satisfies the provisions of section 309(a) applicable to individuals who, like the Applicant, were born out of wedlock.

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 motion to reopen is denied.

Cite as *Matter of R-N-D-L-*, ID# 114263 (AAO Dec. 22, 2016)