



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-A-F-G-

DATE: JAN. 13, 2016

APPEAL OF TAMPA 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) § 301(g), 8 U.S.C. § 1401(g). The Director, Tampa Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born on [REDACTED] in [REDACTED] Canada, to a U.S. citizen father and a Canadian citizen mother. At the time of the Applicant's birth, the Applicant's father was legally married to a woman who is not the Applicant's mother. The Applicant's father and her biological mother did not marry. The Applicant seeks a certificate of citizenship indicating that she acquired U.S. citizenship at birth from her father pursuant to section 301(g) of the Act.

On December 2, 2014, the Director denied the Form N-600, Application for Certificate of Citizenship, finding that the Applicant did not establish that her father was physically present in the United States for five years as required under section 301(g) of the Act.

On appeal, the Applicant submits documents to prove her father's physical presence in the United States during the requisite period.

The record includes, but is not limited to: birth, marriage, and divorce certificates; an affidavit by the spouse of the Applicant's father, a transcript of the father's Florida driving record, a copy of his U.S. passport and Florida driver's license, and a list of the motor vehicles the Applicant's father owned throughout the years. All evidence was reviewed and considered in rendering this decision.

We conduct appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the Applicant was born abroad, she is presumed to be a foreign national 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 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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

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The Applicant was born on [REDACTED] to a U.S. citizen father and a foreign national mother. Accordingly, her citizenship claim falls within the provisions of section 301 of the Act, which provides, in pertinent part:

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. .

As such, the Applicant must first establish that her father was a U.S. citizen who resided in the United States for at least five years, two of which were after his 14th birthday.

In addition, because the Applicant was born out of wedlock, she must satisfy the requirements of section 309(a) of the Act, 8 U.S.C. § 1409(a). Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached 21 years of age. On November 14, 1986, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), amended section 309, applying the changed provisions to persons who were not yet 18 years of age on November 14, 1986. Because the Applicant was not 18 years of age on that date, her application must be considered under the amended section 309 of the Act.

The amended 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-

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

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(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.

The Applicant has submitted sufficient evidence to show that her father was a U.S. citizen at the time of her birth. The evidence includes a copy of the father's birth certificate showing that he was born in the United States on [REDACTED] and a copy of his U.S passport. Accordingly, we conclude that the Applicant satisfies the requirement of sections 301(g) and 309(a)(2) of the Act regarding the U.S. citizenship of her father.

We find, however, that the Applicant has not established by a preponderance of evidence that her U.S. citizen father was physically present in the United States for five years, at least two of which were after his 14th birthday on [REDACTED] and before the Applicant's birth on [REDACTED] as required under section 301(g) of the Act. With her Form N-600, the Applicant submitted a transcript of her father's driver record issued by the State of Florida on September 8, 2014. However, the transcript shows only that the Applicant's father was issued a driver's license on [REDACTED] 1985, and that he was charged with two traffic offenses in 1989 and 1991, for which he was convicted in 1990 and 1991, respectively. The Director found the transcript insufficient to satisfy the physical presence requirement under section 301(g) of the Act. On appeal, the Applicant submits a computer printout from the Florida Department of Highway Safety and Motor Vehicles database, accessed on January 1, 2015, listing motor vehicles that were associated with the Florida driver's license issued to the Applicant's father. The list includes vehicles made in 1978, 1982, 1985, 1986, 1989 and 1991. However, the fact that the vehicles were made between 1978 and 1991 does not necessarily prove that the Applicant's father actually owned these vehicles or was physically present in the United States for at least five years before the Applicant's birth in 1993. In addition, the Applicant submits an affidavit by her father's spouse, which is also signed by the Applicant's father. In her affidavit, the father's spouse states that the Applicant's father lived in Florida from [REDACTED] 1985, until April 2011, and that he did not have a U.S. passport prior to January 25, 2010. We note that the marriage certificate in the record reflects that the Applicant's father and his spouse were not married until [REDACTED] 2011, in [REDACTED] Illinois. The affiant does not explain how she knows that the Applicant's father lived in Florida between 1985 and 2011, and whether her statement is based on personal knowledge. Without this information, the affiant's mere assertion that the Applicant father resided in Florida during the relevant time period without more, is insufficient. Given these deficiencies, we find that the evidence the Applicant submitted to establish that her father was physically present in the United States for five years prior to the Applicant's birth on [REDACTED] two of which followed his 14th birthday, is insufficient.

Furthermore, we find that the Applicant has not demonstrated that she meets the provisions of sections 309(a)(1), (3), and (4) of the Act as required to establish acquisition of U.S. citizenship at birth.

Specifically, the Applicant has not shown by clear and convincing evidence that a blood relationship has been established between her and her father as required under section 309(a)(1) of the Act. The

only evidence of a relationship between the Applicant and her father in the record is the Applicant's Canadian birth certificate issued on November 16, 2010. According to the birth certificate, the information about the Applicant's paternity was provided by the Applicant's mother. The birth certificate was not signed by the Applicant's father. In absence of additional evidence to show the claimed father-child relationship, the birth certificate does not, by itself, establish clearly and convincingly that a blood relationship exists between the Applicant and her U.S. citizen father.

Furthermore, the Applicant has not submitted evidence to show that her father agreed in writing to provide financial support for the Applicant until she reached the age of 18, as required in section 309(a)(3) of the Act. Finally, the Applicant has not presented evidence to establish that she was legitimated under the law of her domicile, or that her paternity was established as provided in section 309(a)(4) of the Act.

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.

Cite as *Matter of S-A-F-G-*, ID# 14306 (AAO Jan. 13, 2016)