U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-K-P-

DATE: JAN. 29, 2016

CERTIFICATION OF CHICAGO FIELD OFFICE DECISION

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

The Applicant, a native of Germany, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 301, 8 U.S.C. § 1401 (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)), and Immigration and Nationality Act § 309, 8 U.S.C. § 1409 (amended by Pub. L. No. 99-653, 100 Stat. 3655 (1986). The Field Office Director, Chicago, Illinois, denied the application. We remanded the subsequent appeal to the Director. The matter is now before us on certification. The initial decision of the Director will be affirmed, and the application will remain denied.

The record reflects that the Applicant was born out of wedlock on [redacted] in Germany. The Applicant's mother married a U.S. citizen in 1960. The Applicant was subsequently adopted by her step-father, and was admitted to the United States as a lawful permanent resident on February 9, 1961. The Applicant seeks a certificate of citizenship indicating that she acquired U.S. citizenship through her adoptive father.

In a July 15, 2013, decision, the Director determined that the Applicant did not derive U.S. citizenship through her adoptive father under former section 321 of the Act, 8 U.S.C. § 1432. The Director noted that the Applicant's mother became a U.S. citizen after the Applicant's 18th birthday. The Form N-600, Application for Certificate of Citizenship, was denied accordingly.

In our decision on appeal, we noted that former section 321 of the Act does not provide for derivation of U.S. citizenship other than upon the naturalization of a parent. We further noted that former section 321(b) of the Act, as with former section 320(b) of the Act, 8 U.S.C. § 1431(b) specifically required that, in the case of adopted children, U.S. citizenship is derived "only if the child is residing in the United States at the time of naturalization of [the parent]." *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2ndCir. 2005). The Applicant's adoptive father is not a naturalized U.S. citizen. The Applicant therefore could not derive U.S. citizenship through her adoptive father.

On appeal, the Applicant claimed that she acquired U.S. citizenship at birth through her biological father, who was listed on her baptismal certificate, and submitted a copy of her baptismal certificate in support. We therefore remanded the matter to the Director to provide the Applicant an opportunity to submit evidence that she fulfilled the requirements of former sections 309(a) and 301(a)(7) of the Act, noting that the Applicant must establish that her paternity was established by

legitimation while she was under the age of 21 and that her biological father was a U.S. citizen who was physically present in the United States for not less than 10 years prior to her birth.

Former section 301(a)(7) 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 . . . 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 ... for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years...

Former section 309(a) of the Act provided, in pertinent part:

> The provisions of paragraphs (3), (4), (5), and (7) of section 301(a) . . . of this title shall apply as of the date of birth to a child out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

After reviewing the documentation submitted by the Applicant related to the father listed on her baptismal certificate, the Director determined, in a May 26, 2015, decision, that the Applicant did not meet her burden of proof that her paternity was established through legitimation prior to her 21st birthday, as required under section 309(a) of the Act. The Director denied the Form N-600 accordingly, and certified the matter to us for review.

Subsequent to the Director's certification, the Applicant submitted a birth certificate which she obtained from Germany which lists her adoptive father as her father. The Applicant claims that this is her official birth certificate, and demonstrates that her adoptive father is her father. The Applicant provides evidence that the father listed on this birth certificate was born in West Virginia on and further provides evidence that he resided in the United States for a period of 10 years prior to her birth. The Applicant then claims that because this father married her mother, and he is listed on the birth certificate as her father, that the requirements of section 309(a) of the Act should be considered fulfilled, and thus she is eligible for U.S. citizenship.

The evidence in the record includes an extract of the Applicant's birth certificate, dated which does not list a father, and identifies the Applicant as having the same surname as her mother, a copy of the adoption contract dated in which she was adopted by the spouse of her mother, and an extract of the Applicant's birth certificate, dated which shows that her birth record was annotated to show that she was adopted on and that her surname was changed to that of her adoptive father.[1] The birth certificate that the Applicant is now presenting was issued in Germany on , and lists her adoptive father as her father.

[1] We note that the Applicant has not provided certified, English language translations for all these documents as required by 8 C.F.R. § 103.2(b)(3).

It is incumbent upon the Applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the Applicant did not provide an explanation regarding the inconsistencies between the birth certificate that was issued in [redacted] and the birth certificates issued in [redacted] and [redacted] and there is no explanation or evidence reconciling the discrepancies between the certificates. Although the [redacted] certificate lists her adoptive father as her father, implying he is her biological father, a preponderance of the evidence in the record indicates that he is an adoptive father.

These documents show that the Applicant's adoptive father is not her biological father, and thus, as indicated in our previous decision, the Applicant cannot derive U.S. citizenship from her adoptive father. In addition, as determined by the Director, the Applicant did not establish she acquired U.S. citizenship through the father listed on her baptismal certificate. The application is therefore denied.

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 initial decision of the Director, Chicago, Illinois Field Office, is affirmed, and the application is denied.

Cite as *Matter of M-K-P-*, ID# 14566 (AAO Jan. 29, 2016)