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

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

MATTER OF M-K-P-

DATE: SEPT. 30, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Germany, 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, Chicago, Illinois, denied the Applicant's Form N-600, Application for Certificate of Citizenship, concluding that the Applicant did not derive US citizenship from her adoptive father. On appeal, the Applicant asserted that she acquired citizenship at birth through her biological father. We remanded the matter to the Director for consideration of this claim and new evidence. The Director again denied the application finding that the Applicant did not establish that she was legitimated by her biological father, and the matter was certified to us for review. On certification, the Applicant made a new claim regarding her paternity, by asserting that her adoptive father was also her biological father. Upon review of the certification, we affirmed the Director's denial decision concluding that the evidence the Applicant submitted was insufficient to show that she was born to her U.S. citizen adoptive father or that she acquired U.S. citizenship through him at birth. The matter is now before us on a motion to reopen.

The motion to reopen will be denied.

I. LAW

The Applicant was born in Germany on [REDACTED] to unmarried parents. In [REDACTED] 1960 the Applicant's mother married a native-born U.S. citizen. The Applicant's mother's spouse adopted the Applicant in [REDACTED] 1960. The Applicant claims, on motion, that her adoptive father (now

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deceased) is also her biological father. On this basis, the Applicant seeks a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her citizen father.

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).

The Applicant was born in [REDACTED] and claims that she was born to a U.S. citizen father and a foreign national mother. Accordingly, her citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which provided that:

[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 by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Because the Applicant was born out of wedlock, she must also satisfy the requirements of section 309(a) of the Act, which pertains to legitimation. Prior to November 14, 1986, section 309(a) of the Act required paternity of a child to be established by legitimation while the child was under the age of 21. The Act of November 14, 1986 amended section 309(a) of the Act, applying the changed provisions to individuals who were not yet 18 years of age on November 14, 1986, unless their paternity had been established by legitimation before November 14, 1986. The Applicant was [REDACTED] years old on November 14, 1986. The legitimation provisions of the old section 309(a) of the Act therefore apply to her case.

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).

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Director initially denied the Applicant's Form N-600 pursuant to former section 321 of the Act. *See* former section 321 of the Act, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000). Specifically, the Director found that the Applicant did not establish that she derived citizenship from her adoptive father because he did not become a citizen through naturalization.

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On appeal, the Applicant did not contest that she did not meet requirements to derive citizenship under former section 321 of the Act. She asserted instead, that she acquired citizenship at birth through her biological father under former sections 301(a)(7) and 309(a) of the Act. In support of her assertion, the Applicant submitted an untranslated document which she claimed was a German birth certificate, containing her alleged biological father's name, [REDACTED] (L-M-). We withdrew the Director's decision and remanded the matter to the Chicago Field Office to provide the Applicant an opportunity to submit evidence that her biological father met U.S. physical presence and legitimation requirements under former sections 301(a)(7) and 309(a) of the Act. On remand, the Applicant submitted additional evidence, including a delayed birth certificate, elementary school records, and military records for L-M-.

The Director again denied the application. The Director determined that although the evidence the Applicant submitted demonstrated that the individual she claimed was her father was a U.S. citizen who met the physical presence requirements under former section 301(a)(7) of the Act, the evidence was insufficient to show that he legitimated the Applicant. Specifically, the Director determined that the putative father's name was listed only on the Applicant's baptismal certificate, not her birth certificate. The Applicant therefore did not demonstrate that she was legitimated under the law in Germany or the law in the state of Alabama, where L-M- resided, as required by former section 309(a) of the Act requirements.

On certification, the Applicant conceded that the individual who was listed on the baptismal certificate was not her biological father. The Applicant asserted instead that her biological father was the individual who adopted her and married her mother in 1960 [REDACTED] (J-M-). In support of this assertion, the Applicant submitted a German birth certificate issued in 2014, listing J-M- as her father. The Applicant also indicated that J-M- legitimated her in Germany, and that his birth certificate and U.S. military records demonstrated that he satisfied U.S. physical presence requirements for her to acquire citizenship through him. We determined that the Applicant provided insufficient evidence to establish the identity of her father, and we affirmed the Director's initial decision.

The matter is now before us on a motion to reopen. On motion, the Applicant submits a report of child born abroad for her sibling and a divorce decree. The Applicant contends that although her original birth certificate does not contain paternity information, her recently obtained birth certificate reflects that J-M- is her father. The Applicant claims that the new evidence, along with previously submitted documentation, demonstrates that she was born to and legitimated by J-M-, and that she acquired citizenship a birth through him. The entire record has been reviewed and considered.

III. ANALYSIS

As stated above, to establish acquisition of U.S. citizenship at birth, the Applicant must show the familial relationship between herself and her claimed father, and that her biological father was a U.S. citizen who was physically present in the United States for at least 10 years before the Applicant's

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birth, 5 of which were after the father's 14th birthday. In addition, the Applicant must demonstrate that paternity was established by legitimation before the Applicant's 21st birthday.

The issue on motion is whether new evidence demonstrates that the Applicant's adoptive father, J-M-, is also her biological father, and if so, whether the Applicant acquired citizenship through him under former sections 301(a)(7) and 309(a) of the Act.¹ Upon review, we find that the Applicant has not established that her adoptive father, J-M-, is her biological father. Because the Applicant has not shown that she was born to a U.S. citizen parent, we do not reach the issue of whether J-M- met the U.S. physical presence requirements under former section 301(a)(7) of the Act, or whether he legitimated the Applicant in accordance with requirements contained in former section 309(a) of the Act.

The Applicant was born in Germany on [REDACTED]. The record contains a German birth certificate, registered on [REDACTED] that contains only the Applicant's mother's name and does not list paternal information. To establish that J-M- is her biological father, the Applicant submits a German birth certificate, issued in August 2014, which lists J-M- as her father.

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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The same evidentiary weight does not attach to a delay-issued birth certificate, as would attach to one contemporaneous with the actual birth. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726 (BIA 1968). A delay-issued certificate must be evaluated in light of other evidence in the record, and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). For the reasons discussed below, we find that the Applicant's birth certificate, issued in 2014, is insufficient to establish that J-M- is the Applicant's biological father.

To resolve the inconsistencies between her birth certificates, the Applicant asserts simply that the lack of paternal information on her [REDACTED] birth certificate does not exclude J-M- as her biological father. Nevertheless, a July 1960 annotation written on a copy of the Applicant's earlier birth certificate contained in the record states that J-M- accepted his wife's minor child (the Applicant), by means of a [REDACTED] 1960 notarial contract, and that he let the child use his family name for all future use. The 1960 annotation to the Applicant's birth certificate clearly reflects that J-M- is not the Applicant's biological father. In addition, the Applicant's adoption contract, reflecting that J-M- adopted the Applicant in [REDACTED] 1960, clearly indicates in section I that the Applicant's mother and J-

¹ The Applicant does not contest our previous finding that she did not establish eligibility for derivative citizenship under former section 321 of the Act. She also does not contest our previous finding that she did not demonstrate that she acquired citizenship at birth under former sections 301(a)(7) and 309(a) of the Act through L-M-, the man listed as her father on a baptism certificate.

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M- have no children together, and describes the Applicant as the illegitimate child of the adoptive father.

German Civil Code (BGB) provisions indicate further how a non-biological father could be listed as the father of an adopted child on a birth certificate issued in 2014. *See* BGB (in effect January 2, 2002, *amended by* Article 4 para. 5 of the Act of 1 October 2013, https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.) Specifically, the BGB provides at section 1754(1) that, “if a married couple adopts a child or if a spouse adopts a child of the other spouse, the child attains the legal position of a child of both the spouses.” *Id.* In addition, the BGB provides at section 1757(1), that a child receives as its birth name the family name of the adoptive parent. *Id.*

On motion, the Applicant submits a military form reflecting that when her mother and J-M- reported her sister’s birth abroad in [REDACTED] they indicated that the Applicant was born of their marriage. The Applicant also submits an undated divorce decree for her mother and J-M-, alleging that the Applicant was born of their marriage. These documents do not establish that J-M- is the Applicant’s biological father. Although both documents indicate that the Applicant was born of the marriage between her mother and J-M-, the record reflects that the couple did not marry until [REDACTED] 1960, over a year after the Applicant was born. The Applicant’s mother also indicated on her 1972 naturalization-related Statement of Facts for Preparation of Petition that the Applicant was her illegitimate child adopted by her spouse, J-M-.

Upon review, we find that the Applicant has provided insufficient evidence to demonstrate that her adoptive father, J-M-, is her biological father. Because the Applicant has not demonstrated that she was born to J-M-, she may not acquire citizenship through him under former section 301(a)(7) of the Act. It is therefore unnecessary to determine whether he met legitimation and U.S. physical presence requirements set forth in former sections 309(a) and 301(a)(7) of the Act.

IV. CONCLUSION

In view of the above, the Applicant has not established that she was born to a U.S. citizen parent and that she acquired U.S. citizenship under former section 301(a)(7) 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). The Applicant has not met that burden.

ORDER: The motion to reopen is denied.

Cite as *Matter of M-K-P-*, ID# 114313 (AAO Sept. 30, 2016)