



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

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

MATTER OF Y-G-L-G-

DATE: JULY 14, 2017

APPEAL OF MILWAUKEE, WISCONSIN FIELD OFFICE DECISION

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

The Applicant, who was born out of wedlock in Mexico in [REDACTED] seeks a Certificate of Citizenship indicating she acquired U.S. citizenship at birth from her father. *See* Immigration and Nationality Act (the Act) section 301(g), 8 U.S.C. § 1401(g), *amended by* Act of November 14, 1986, Pub. L. 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, and who was born to unmarried parents on or after 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 five years (two of which occurred after the age of 14) before the individual's birth, and the individual must also satisfy legitimation requirements.

The Director of the Milwaukee, Wisconsin, Field Office denied the application, concluding that the Applicant did not establish, as required, that her father was physically present in the United States for five years before the Applicant's birth, two years of which occurred after he turned 14 years old.

On appeal, the Applicant submits an affidavit from her father, and additional evidence of his physical presence in the United States.

Upon *de novo* review, we will sustain the appeal.

**I. LAW**

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 on [REDACTED] to a U.S. citizen father and a Mexican citizen mother. Her citizenship claim, therefore, falls within the provisions of section 301(g) of the Act, which was in effect in [REDACTED] and which provides 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 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. *Provided*, That any periods of honorable service in the Armed Forces of the United States . . . by such citizen parent . . . may be included in order to satisfy the physical-presence requirement of this paragraph. . . .

However, an individual who, like the Applicant, was born out of wedlock to a U.S. citizen father may acquire citizenship under section 301(g) of the Act only if certain additional requirements concerning paternity, legitimation, and financial support are also met. Those requirements are set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), which 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,
  - (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

There is no dispute that the Applicant's claimed father is a U.S. citizen. A copy of her father's 1995 Certificate of Naturalization establishes that he became a U.S. citizen more than two years prior to the Applicant's birth. The remaining issues, therefore, are whether the Applicant has established her father was physically present in the United States for the requisite time period before her birth and, if so, whether the Applicant has also demonstrated she meets the conditions in section 309(a) of the Act, which apply to children born out of wedlock to U.S. citizen fathers.

In support of the Form N-600, Application for Certificate of Citizenship (citizenship application), the Applicant initially submitted copies of her birth certificate, her parents' 2001 marriage certificate, her father's Certificate of Naturalization and copies of U.S. passports issued to her in 2008 and 2013. The Director issued a request for evidence (RFE) asking the Applicant to submit additional proof of her father's physical presence in the United States prior to her birth.

In response, the Applicant provided copies of her father's federal income tax returns, pay stubs, and copies of her father's driver licenses. The Director determined this evidence was insufficient to show that the father was physically present in the United States for the requisite time period. The Director did not address the legitimation requirements of section 309(a) of the Act in the decision.

When initially reviewing the record on appeal, we noted that the Applicant submitted additional evidence of the physical presence of her father, including a social security statement showing his earnings from 1983 to 2013 that, and in conjunction with the evidence already in the record, demonstrated that the Applicant's father was likely present in the United States for at least five years before the Applicant's birth, with two of those years occurring after he reached the age of 14. However, we issued an RFE to the Applicant, requesting that she provide a better copy of her birth certificate, and evidence that her father had agreed, in writing, to provide financial support to her until she turned 18 years of age. The Applicant has responded to our RFE and we now find that the evidence establishes that the Applicant is eligible for a Certificate of Citizenship.

#### A. Father's Physical Presence in the United States

To establish the claimed U.S. citizenship, the Applicant must show her father was physically present in the United States for at least five years prior to her birth in [REDACTED] at least two of which were after the father's 14th birthday in [REDACTED]

The Applicant indicated on her citizenship application that her father has been physically present in the United States from 1978 to the present. Her father specifies in an affidavit that he became a lawful permanent resident in 1989 as a beneficiary of the Immigration Reform and Control Act of 1986. In order to qualify for this benefit, he indicates he was required to prove he was residing in the United States since at least January 1, 1982. He adds that he became a naturalized U.S. citizen in 1995, and the requirements for naturalization include continuous permanent residence in the United States for at least five years, and physical presence in the United States for at least 30 months.

Evidence in the record is consistent with her father's claims. A 1987 letter of employment shows he was employed in the United States from June 1983 to April 1987, and is supported by income tax records and a social security earnings statement. A copy of a lease signed in April 1983, supplemented by rent receipts and a 1987 letter, show her father resided in the United States from April 1983 to July 1985. This documentation establishes her father was physically present in the United States from April 1983 to April 1987, a period of four years.

In addition, her father's income tax records and social security earnings reflect full-time employment in the United States between 1988 and [REDACTED]. This is further corroborated by: immigration forms filed in 1989; training records from 1989, 1991, and 1995; a 1994 California driver's license; and pay stubs from 1995, 1997, and [REDACTED]. The amount of income, along with this supplemental documentation, establishes the Applicant's father's physical presence in the United States from 1988 to [REDACTED].

We therefore find that the evidence in the record is sufficient to establish that the Applicant's father was physically present in the United States for five years prior to her birth, at least two of which were after attaining the age of 14 years, as required under section 301(g) of the Act.

## B. Legitimation and Other Requirements Under Section 309(a) of the Act

The Applicant has also shown she meets the requirements of section 309(a) of the Act.

### 1. Clear and Convincing Evidence of Blood Relationship

While, generally, a preponderance of evidence standard of proof applies in citizenship proceedings, section 309(a)(1) of the Act specifically requires that a blood relationship between the U.S. citizen father and his child be established by *clear and convincing evidence*. The clear and convincing standard of proof requires more than the preponderance of the evidence standard but less than the beyond a reasonable doubt standard. It is a degree of proof which will produce a firm belief or conviction. See *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988).

Here, the evidence of a blood relationship between the Applicant and her father, indicated on her birth certificate, and supported by his father's subsequent marriage to her mother, and his sponsorship of the Applicant and her mother to reside together in the United States, satisfies this standard. The Applicant initially provided an August [REDACTED] extract of her birth record from the Civil Registry in the State of [REDACTED] Mexico. However, the photocopy of this birth record was not clear, and some fields were illegible. We therefore requested in our RFE that the Applicant submit a clearer copy of her birth record, or an original extract of her birth record. In response to the RFE, the Applicant provided an April 2016 extract of her birth certificate, which is both clear and legible. The birth certificate indicates a formal recognition by a civil authority of a biological relationship between the Applicant and her father. We find this evidence establishes clearly and convincingly that a blood relationship exists between the Applicant and her U.S. citizen father as required by section 309(a)(1) of the Act.

### 2. Father's Nationality at the Time of the Applicant's Birth

The father's Certificate of Nationalization shows he has been a U.S. citizen since 1995, and there is no evidence he subsequently lost U.S. citizenship. Thus, we conclude that the father was a U.S. citizen at the time of the Applicant's birth in [REDACTED] as required in section 309(a)(2) of the Act.

### 3. Financial Support Agreement

We also find evidence in the record sufficient to satisfy the financial support requirement of section 309(a)(3) of the Act.

The Applicant is now over the age of 18. In our RFE, we asked the Applicant to provide evidence that her father agreed, in writing, to provide financial support to her until she reached the age of 18 years. In response to the RFE, the Applicant states she was initially issued a U.S. passport in 2003, valid for five years, and was subsequently re-issued U.S. passports in 2008 and 2013. Copies of the Applicant's 2008 and 2013 passports are included in the record. The Applicant submitted a copy of an affidavit from her father, executed in August 2003 in support of the Applicant's initial passport application, which satisfies the written agreement required by the statute. As such, she meets the requirements set forth in section 309(a)(3) of the Act concerning financial support.

### 4. Legitimation of the Applicant

Lastly, the Applicant must demonstrate she also met one of the conditions concerning paternity set forth in section 309(a)(4) of the Act prior to her 18th birthday. The Applicant submitted a copy of her parents' marriage certificate, showing they were married in [REDACTED] Mexico, in [REDACTED] 2001, when the Applicant was [REDACTED] years old. Article 486 of the 1953 Civil Code of Jalisco (Civil Code) states that children born before the marriage of their parents are considered born of the marriage by the subsequent celebration of the marriage. Article 487 of that Civil Code indicates that in order for a child to enjoy this right, the parents must expressly acknowledge the child prior to the celebration of the marriage, during the celebration itself, or during the marriage. The Applicant's birth certificate reflects that her father acknowledged her as his child, and therefore she has established that her father legitimated her, satisfying the requirement of section 309(a)(4) of the Act.

## III. CONCLUSION

The Applicant has demonstrated that her U.S. citizen father was in the United States for the requisite time period, and she has also shown that she meets the requirements which apply to children born out of wedlock. The Applicant has therefore established she acquired U.S. citizenship at birth from her father.

**ORDER:** The appeal is sustained.

Cite as *Matter of Y-G-L-G-*, ID# 107386 (AAO July 14, 2017)