



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

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

MATTER OF D-A-M-

DATE: JUNE 29, 2017

APPEAL OF MIAMI, FLORIDA FIELD OFFICE DECISION

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

The Applicant, who was born in Uruguay in [REDACTED] seeks a Certificate of Citizenship indicating she acquired citizenship from her U.S. citizen father. *See* Immigration and Nationality Act (the Act) section 301(g), 8 U.S.C. § 1401(g), section 309(a) of the Act, 8 U.S.C. §1409(a), *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 5 years (2 of which occurred after the age of 14) before the individual's birth, and the individual must also satisfy legitimation requirements, which include the father's agreement to provide financial support.

The Director of the Miami, Florida Field Office denied the application. The Director determined the Applicant did not establish that her U.S. citizen father agreed in writing to provide financial support for the Applicant until she reached the age of 18, as required under section 309(a)(3) of the Act. The Applicant filed a motion to reopen and reconsider, which the Director denied in October 2016.

The matter is now before us on appeal. On appeal, the Applicant contends that a statement from her father satisfies the requirement that he has agreed in writing to provide financial support for her.

Upon *de novo* review, we will dismiss 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). As the Applicant was born in [REDACTED] to a U.S. citizen father and a foreign national mother, 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

Because the Applicant was born out of wedlock, and is claiming citizenship through her father, she must also satisfy the requirements of section 309(a) of the Act, which pertain to legitimation. 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,
 - (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.

As 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 "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of her case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

II. ANALYSIS

The Applicant has established she meets the requirements for acquisition of citizenship at birth under section 301(g) of the Act. Specifically, she has shown her father was a U.S. citizen at the time of her

birth by submitting a copy of his 1989 Certificate of Citizenship. The Applicant has also demonstrated her father was physically present in the United States for a period or periods totaling not less than 5 years before her birth, at least 2 of which were after he attained the age of 14 years.¹

She has also shown she meets some of the conditions in section 309(a) of the Act. As discussed above, she meets section 309(a)(2) of the Act requirements because she has shown her father was a U.S. citizen at the time of her birth. In addition, the Applicant's birth record reflects that her father acknowledged his paternity six months after her birth, before the Civil Status Official of the Department of Uruguay, satisfying the section 309(a)(4)(B) of the Act conditions. Furthermore, an affidavit from the Applicant's mother, the paternity acknowledgment, and DNA test results connecting the Applicant with her paternal grandparents constitute clear and convincing evidence of the claimed blood relationship as required by section 309(a)(1) of the Act.

The remaining issue in this case is whether she fulfills section 309(a)(3) of the Act conditions – that her U.S. citizen father agreed in writing to provide financial support to the Applicant until she reached the age of 18. The Applicant submits a letter from her father to her great-grandparents purportedly written while he was in prison in Pennsylvania prior to 2001, when the Applicant was years old, in which her father indicates his desire to fulfill his parental duty, and that he would love to provide pay her expenses.

The Director found there was insufficient evidence to determine exactly when the letter was written in order to verify if it was actually written prior to the Applicant's 18th birthday. The Director further found the Applicant's assertion that her father financially supported her after his release from prison through payments to relatives, which could possibly have lent credence to the letter, was only supported by affidavits, which were not substantiated through documentary evidence.

On appeal, the Applicant contends that the context of the letter, showing the address of the Applicant's father as the prison address in Somerset, Pennsylvania, establishes the letter was written prior to the Applicant's 18th birthday, as the Applicant's father was released from the prison in 2001. The Applicant submits an affidavit from her great-grandmother, which states that she received correspondence, including that letter, from the Applicant's father between 1997 and 2001. The Applicant further contends that section 309(a)(3) of the Act only requires an agreement in writing to provide support, and does not require actual payment of that support.

While we agree with the Applicant that actual payment of financial support is not required under section 309(a)(3) of the Act, we also concur with the Director that she did not meet her burden of

¹ Evidence for her father's physical presence in the United States for the years prior to his 14th birthday in includes a 1976 newspaper article with his photograph, school documents from September 1976 through 1979, and an April 1981 school document. For the years subsequent to her father's 14th birthday and prior to her birth, to the record includes high school records for 1983 to 1985, and copies of federal income tax returns for the Applicant's grandfather showing her father lived in her grandfather's household during the years 1984, 1986, and 1988. The Applicant has therefore established that her father was physically present in the United States for at least 8 years prior to her birth, with at least 5 years after his 14th birthday.

proof to show the letter was written before she turned 18. Moreover, even if she did, we further find her father's statement is insufficient to meet the requirements of section 309(a)(3) of the Act.

A. Actual Payment of Agreed Support

Section 309(a)(3) of the Act requires that the Applicant's father agreed in writing to provide financial support for the Applicant until she reaches the age of 18 years. We agree with the Applicant that she is not required to show her father actually provide the agreed-upon financial support. However, the decisions reflect the Director did not find actual payment of support was required, but rather that evidence of such support would provide credence to the statement of the Applicant's father in the letter that he would love to pay the Applicant's expenses.

B. Date the Letter with Statement of Support was Written

The Applicant submits a letter from her father, purportedly written when he was imprisoned in ██████████ Pennsylvania between 1997 and 2001, in which her father indicates he wants to fulfill his duty as a father and pay her expenses. The letter, however, is not dated. The Director stated that U.S. Citizenship and Immigration Services (USCIS) was unable to determine exactly when the letter was written in order to verify whether it was actually written prior to the Applicant's 18th birthday, as required by the statute.

On appeal, the Applicant contends that the context of the letter indicates that it was written before she turned 18 years of age. She states that the letter gives her father's prison address, and he was in prison between 1997 and 2001. She adds that the letter talks about her as a little girl, not an adult. Therefore, she asserts this proves the statement of her father's support was written prior to her 18th birthday. She also submits an affidavit from her great-grandmother, in which she claims she received the letter and other correspondence between 1997 and 2001. Although the letter contains an address in Pennsylvania and indicates the Applicant is a child, such statements could have been written at any time. There is no date on the letter, and no envelope with a postmark, which would provide evidence regarding when the letter was actually written, and her great-grandmother's statements.²

As such, we concur with the Director that the Applicant has not established by a preponderance of the evidence that the letter was written prior to her 18th birthday.

² The Applicant states that USCIS could conduct a lab analysis of the age and authenticity of the letter. However, as previously discussed, the Applicant, not USCIS, bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence.

C. Adequacy of the Statement of Support in the Father’s Letter

Even if she had provided sufficient evidence to show the letter was dated before her 18th birthday, she has not demonstrated it constitutes a qualifying agreement to provide financial support under section 309(a)(3) of the Act.

As discussed above, the Applicant submits a letter purportedly written by her father to her great-grandparents prior to her 18th birthday, in which her father states (according to a translation provided by the Applicant): “I want her to have access to a good education. I think it will not be long and in a near future, fulfill my duty as a father. I will love to pay her expenses but also I want to become her friend, not only her father.”

This statement does not reflect that the father *agreed* to financially support the Applicant until she turns 18 years old, as required. The word “agree” means “[t]o exchange promises; to unite in an engagement to do or not do something.”³ Here, although the father indicates he will “love” to pay the Applicant’s expenses, this is in the context of a “near future” where he “thinks” he can fulfill his duty as a father. The father’s language indicates a *desire* to help with her expenses at some indefinite point in the future, but it does not rise to the level of a *promise* to provide financial support, or an engagement to do so. Nor does he indicate in the letter that he will provide such support until she turns 18 years old.

We therefore find the Applicant’s father’s statement, even if it was written prior to the Applicant’s 18th birthday, does not meet the requirement of an agreement in writing to provide financial support until she reached the age of 18.

III. CONCLUSION

The Applicant has not shown, by a preponderance of the evidence, that her father agreed in writing to provide financial support to her until her 18th birthday, as required by statute. Accordingly, she has not established that she acquired U.S. citizenship at birth through her U.S. citizen father under sections 301(g) and 309(a) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of D-A-M-*, ID# 330239 (AAO June 29, 2017)

³ AGREE, Black’s Law Dictionary (10th ed. 2014).