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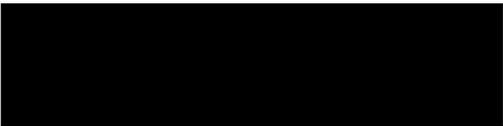
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 14 2012**

Office: EL PASO, TX

FILE: 

IN RE:

Respondent: 

APPLICATION:

Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453.

ON BEHALF OF RESPONDENT:

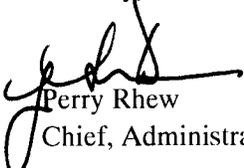


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The respondent's Certificate of Citizenship was cancelled by the Field Office Director, El Paso, Texas, and the director's decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On September 22, 2011, the field office director issued a decision cancelling the respondent's Certificate of Citizenship. The director's decision was based on a finding that the applicant did not have a U.S. citizen parent such that she could have acquired U.S. citizenship at birth under section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

On appeal, the respondent maintains that the director erred in cancelling her Certificate of Citizenship. Specifically, the respondent, through counsel, states that she fits within the definition of "child" found in section 101(c) of the Act, 8 U.S.C. § 1101(c), because she was legitimated by [REDACTED] and therefore acquired U.S. citizenship at birth through him. See Applicant's Appeal Brief.

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

The regulations at 8 C.F.R. § 342 outline the process for cancellation of a certificate of citizenship under the Act. The AAO notes that the director properly notified the respondent of his intent to cancel the Certificate of Citizenship and afforded her an opportunity to respond as required by the Act and the regulations.

The respondent [REDACTED] 1991 in Mexico. The applicant's birth certificate indicates that her parents are [REDACTED] and [REDACTED] however, [REDACTED] is not the applicant's biological father. The applicant's mother married [REDACTED] in 2005. [REDACTED] acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant's mother is not a U.S. citizen. The respondent maintains that she is entitled to a certificate of citizenship because she acquired U.S. citizenship through [REDACTED]

At issue is whether the respondent acquired U.S. citizenship at birth [REDACTED]. The burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. See Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2.

Section 301(g) of the Act states, in pertinent part, 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

Section 101(c) of the Act provides, in relevant part, the following definition of child for purposes of Title III of the Act:

...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The AAO notes that, unlike the definition of "child" found in section 101(b) of the Act, 8 U.S.C. § 1101(b), the section 101(c) definition of "child" that is applicable to naturalization and citizenship cases does not include a step-parent provision. The AAO further notes that section 301 of the Act does not contain the term "child." Lastly, the term "parent" is not defined for purposes of naturalization and citizenship cases in the Act.

In support of the applicant's claim that she acquired U.S. citizenship at birth from [REDACTED] [REDACTED] counsel cites to *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005) and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000). See Applicant's Appeal Brief at 5. Reliance on these cases is misplaced. First, Ninth Circuit decisions are not binding in this case as this matter arises within the jurisdiction of the Fifth Circuit Court of Appeals. Additionally, *Scales* and *Solis-Espinoza* related to applicants born in wedlock.¹ The applicant's mother married [REDACTED] years after the applicant's birth and there is no claim here that the applicant was born in wedlock. The cases cited are therefore not only unpersuasive, but also not pertinent to the applicant's case.

¹ The Ninth Circuit found that the applicant in *Solis-Espinoza* was born in wedlock because he was born after his natural father's marriage to his step-mother. The applicant in this case was born prior to her mother's marriage to [REDACTED]. He was born out of wedlock. See Black's Law Dictionary (defining "born out of wedlock" as born to "parents [who] are not, and have not been, married to each other regardless of marital status of either parent with respect to another").

U.S. citizenship can only be transmitted under to INA § 301(g) by a biological U.S. citizen parent.² This interpretation is premised on the language of the statute itself (“born . . . of parents”) as well as on the concept of *jus sanguinis*. See 8 Whiteman, Digest of International Law, at 119 (1967) (explaining acquisition of U.S. nationality at birth through *jus soli* or *jus sanguinis* under the Act). Black’s Law Dictionary defines “*jus sanguinis*” as “the right of blood. The principle that a person’s citizenship is determined by the citizenship of the parents.” See also *Miller v. Albright*, 523 U.S. 420, 436 (1998) (explaining that “ensuring reliable proof of a biological relationship between the potential citizen and its citizen parent is an important governmental objective”) (citations omitted).

The evidence in the record, including the responses by [REDACTED] during the applicant's mother's visa petition proceedings, clearly establish that he is not the applicant's biological father. Moreover, the applicant was born prior to her mother's marriage to [REDACTED]. The applicable provision for transmission of U.S. citizenship to children born out of wedlock specifically requires clear and convincing proof of a blood relationship between parent and child.³ The applicant therefore did not acquire U.S. citizenship from [REDACTED] under section 301, 309 or any other provision of the Act.

The burden of proof in cancellation proceedings is on the government, and cancellation of a Certificate of Citizenship is authorized “if it shall appear to [the] satisfaction” of the Secretary of the Department Homeland Security” that the Certificate was illegally or fraudulently obtained.

² See Interpretation 309.1(b)(3) (stating that “[t]he purported legitimation of a child by a citizen's acknowledgment of the child and marriage to the mother does not result in the bestowal of citizenship upon the child if the natural relation of parent and child does not exist between the acknowledging citizen and the child”); see also 7 Foreign Affairs Manual (FAM) 1131.2 (stating that since 1790 there has been a requirement that “[a]t least one *natural* parent must have been a U.S. citizen when the child was born”) (emphasis in original) and 7 FAM 1131.4 (stating that “[a]bsent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired”).

³ Section 309(a) of the Act states:

- (a) 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.

The AAO finds that the director has met his burden of proof and that the respondent's Certificate of Citizenship was properly cancelled. The respondent's appeal will therefore be dismissed.

ORDER: The appeal is dismissed.