U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-B-

DATE: MAY 3, 2017

APPEAL OF HARTFORD, CONNECTICUT FIELD OFFICE DECISION

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

The Applicant, who was born out of wedlock in Bahrain in [redacted] seeks a Certificate of Citizenship indicating he acquired U.S. citizenship at birth from his 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, 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 certain paternity or legitimation requirements.

The Director of the Hartford, Connecticut Field Office denied the application, concluding that because Bahrain law does not provide for legitimation of children born out of wedlock, the Applicant could not be legitimated by his father and, thus, he did not acquire his U.S. citizenship at birth.

On appeal, the Applicant submits a brief and asserts that the Director's decision was in error. He states that he was legitimated by his father under Connecticut law. In the alternative, the Applicant claims he meets the relevant provision of the Act concerning children born out of wedlock, because his father acknowledged paternity in writing and under oath before the Applicant was 18 years old.

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

I. FACTS AND PROCEDURAL HISTORY

The Applicant was born in Bahrain on [redacted] Although his birth certificate indicates that both his parents are foreign nationals, the Applicant's biological father is actually a U.S. citizen, born in the United States in [redacted] The father explains in a sworn statement that because the Applicant was conceived out of wedlock, he did not publically acknowledge him as his child fearing punishment for himself, the mother, and the child under the strict religious Bahrain law. For this

reason, when the Applicant's mother discovered she was pregnant, she married her first cousin so it would appear that the Applicant was born of her marital relationship with a Muslim man.[1] In August 2014, when the Applicant was [redacted] years old, he was admitted to the United States as a nonimmigrant visitor for pleasure.

II. 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 in [redacted] to a U.S. citizen father and a foreign national mother. His 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 blood relationship, 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,

[1] The Applicant has not presented evidence of the claimed marriage of his mother. The term "out of wedlock" is not defined in the Act, but it ordinarily means that the person's natural parents were not legally married *to each other* at the time of the person's birth. *See Hernandez Rosales v. Lynch*, 821 F.3d 625, 628 (5th Cir. 2016). The Applicant represented on the Form N-600, Application for Certificate of Citizenship, that his biological father was not married to his mother, and the father confirms this representation in his sworn statement. Thus, regardless of whether the Applicant's mother was married to the individual listed on the birth certificate as his father, for the purposes of citizenship law, we consider the Applicant to be born out of wedlock.

(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.

III. ANALYSIS

The Applicant has shown he meets many of the requirements to acquire U.S. citizenship. DNA test results constitute clear and convincing evidence of the claimed parent-child relationship, and the father's birth certificate shows he was born in the United States. He has therefore fulfilled the provisions of section 309(a)(1) and (2) of the Act. The Applicant also meets the conditions in section 309(a)(3) of the Act, as his father executed a sworn affidavit, while the Applicant was under 18 years old, in which he confirmed paternity and agreed to provide financial support for the Applicant until he reached 18 years of age. In addition, the Applicant provided evidence that his father honorably served in the for over five years before the Applicant's birth in Pursuant to section 301(g) of the Act, those years qualify as the father's physical presence in the United States. The remaining issue is whether the Applicant has satisfied the requirements of section 309(a)(4) of the Act to acquire U.S. citizenship from his father.

Relying on the Library of Congress advisory opinion that there was no legal process for legitimation of an out-of-wedlock child in Bahrain by the child's biological father, the Director determined that the Applicant could not meet the legitimation requirement for acquisition of U.S. citizenship, despite the fact that his paternity was established by the DNA test and his father's written acknowledgment of paternity under oath.

On appeal, the Applicant does not contend that he was not legitimated in Bahrain, but asserts that there is nothing in section 309(a) of the Act that requires legitimation to occur under the law of a person's birthplace. Rather, that section states that the person must be legitimated under the law of the person's residence or domicile prior to the age of 18 years. The Applicant claims he meets this requirement because the father's written affirmation of paternity was a legitimating act under Connecticut law where he has been residing since 2014. In the alternative, the Applicant argues that he satisfies the condition in section 309(a)(4)(B) of the Act regarding acknowledgment paternity, because his father declared in writing and under oath that he is the Applicant's father.

We agree that the father's sworn affidavit is sufficient to meet the paternity requirement under that section. Accordingly, we will not address whether the Applicant was also legitimated by his father under Connecticut law.

A. Acknowledgment of Paternity in Writing Under Oath

Section 309(a)(4) of the Act provides three separate ways in which paternity of a child born out of wedlock may be established for the purposes of acquisition of U.S. citizenship at birth from the father:

- The child is legitimated under the law of the person's residence or domicile,
- The father acknowledges paternity of the child in writing under oath, or
- The paternity of the child is established by adjudication of a competent court.

Thus, any one of the above acts will suffice, as long as it is accomplished before the child's 18th birthday. We find that the father's 2014 sworn affidavit serves as a written acknowledgment of paternity required under this section. In this affidavit, the father states, in pertinent part:

> By signing this affidavit I [] do solemnly swear that . . . I am the father of [the Applicant]. . . . My child was born out of wedlock, and I am the father through whom he is claiming U.S. citizenship. I agree to provide financial support for this child until he reaches the age of eighteen . . . . I [] swear under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Accordingly, because the Applicant's father declared paternity in writing, under penalty of perjury,[2] and before the Applicant was 18 years old, the Applicant meets the paternity acknowledgment criteria in section 309(a)(4)(B) of the Act.

IV. CONCLUSION

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

ORDER: The appeal is sustained.

Cite as *Matter of T-B-*, ID# 243182 (AAO May 3, 2017)

[2] Declaration under the penalty of perjury has the same force and effect in these proceedings as a statement under oath. *See* 28 U.S.C. § 1746.