

6 I. & N. Dec. 555 (BIA), Interim Decision 734, 1955 WL 8702

United States Department of Justice

Board of Immigration Appeals

IN THE MATTER OF B-----

In VISA PETITION Proceedings

VP-6-7782

Decided by Board April 7, 1955

****1 *555 Preference quota status-Children of parent who is a national but not a citizen of the United States.**

While the minor children of a parent who is a national but not a citizen of the United States are not eligible for nonquota status under section 101 (a) (27) (A) or preference quota status under section 203 (a) (4) of the Immigration and Nationality Act, they are eligible for preference quota status under section 203 (a) (3) of that act.

BEFORE THE BOARD

Discussion: The matter comes forward on appeal from the order of the District Director, Miami District, dated December 17, 1954, denying the petition on the ground that the petitioner is a national and not a citizen of the United States and is, therefore, not eligible to file a visa petition on behalf of the beneficiaries.

The petitioner seeks nonquota status under section 101 (a) (27) (A) or preference status under section 203 (a) (4) on behalf of the beneficiaries. The beneficiaries are the children of the petitioner. A----- was born September 6, 1931, G----- was born July 29, 1933, and S--- was born January 10, 1936, all at Jamaica, British West Indies; and I----- was born May 28, 1940, at Grenada, British West Indies. The two oldest children, being over 21 years of age, are not eligible for nonquota status.

Section 101 (a) (27) (A) of the Immigration and Nationality Act grants nonquota status to the child of a *citizen* of the United States, and section 203 (a) (4) grants preference status for sons and daughters of *citizens* of the United States. The petitioner herein has submitted a certificate of baptism and affidavits to establish that she was born on January 22, 1898, at St. Thomas, Virgin Islands. In her petition she sets forth that she has been absent from the Virgin Islands since 1922 during which period she has resided in the British West Indies in which she presently resides. Throughout her visa petition the petitioner indicates that she is a national rather than a citizen of the United States and that she is the bearer of American passport No. 197 issued at the *556 American Consulate, Port of Spain, Trinidad, British West Indies, on July 8, 1954, as an inhabitant of the Virgin Islands. The facts relating to the petitioner indicate that she did not acquire United States citizenship under the provisions of the Act approved February 25, 1927, as amended by the Act of June 28, 1932, since she did not on those dates reside in the Virgin Islands of the United States, the United States, or Puerto Rico.¹ Since she does not qualify as a citizen of the United States the petitioner is not eligible to file a visa petition for nonquota status or fourth preference status because in both instances the relationship existing must be between that of a citizen parent and an alien child.

Section 203 (a) (3) provides a preference for children of aliens lawfully admitted for permanent residence. The term "lawfully admitted for permanent residence" is defined in section 101 (a) (20) as the status of having been lawfully accorded the privilege of residing in the United States as an immigrant. The petitioner is a national in possession of a United States passport and thus appears to have been lawfully accorded the privilege of residing permanently in the United States. She will be regarded as eligible to file a petition for a preference under section 203 (a) (3) and the visa petition will be approved for third preference status for the minor beneficiaries.

****2 Order:** It is ordered that the visa petition be approved for preference status under section 203 (a) (3) of the Immigration and Nationality Act on behalf of the minor beneficiaries.

Footnotes

- ¹ Cf. Section 306 (a), Immigration and Nationality Act.

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