S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 01-104

Name Change of Non-U.S. Citizen

QUESTIONS

1. Is a court of competent jurisdiction required to grant a legal name change to non-U.S. citizens through the judicial procedure set up by Tenn Code Ann. §§ 29-8-101 through 105, taking into account the fact that a United States court does not have jurisdiction to change a passport issued by another country?

2. Is a court of competent jurisdiction required to grant a name change to all or just certain classifications of non-U.S. citizens?

OPINIONS

1. It is the opinion of this office that a court of competent jurisdiction may grant a name change to a non-U.S. citizen as long as that person complies with the relevant provisions of Tennessee law and the name change is not done for any fraudulent purpose.

2. It is the opinion of this office that a court of competent jurisdiction may grant a name change to any non-U.S. citizen who is a resident of the county in which the court sits.

ANALYSIS

Tenn. Code Ann. §§ 29-8-101 through 105 give concurrent jurisdiction to the circuit, probate and county courts to change the name of "a resident of the county." Tenn. Code Ann. § 29-8-101 provides as follows:

> (a) The circuit, probate and county courts have concurrent jurisdiction to change names and to correct errors in birth certificates on the application of a resident of the county in which the application is made.

> (b)(1) Notwithstanding any other provision of law to the contrary, persons who have been convicted of the following offenses shall not have the right to legally change their names:
>
> (A) First or second degree murder; or
>
> (B) Any offense, the commission of which requires a sexual offender to register pursuant to the Sexual Offender Registration and Monitoring Act, codified in title 40, chapter 39.
>
> (2) The provisions of this subsection shall not apply if the name change is the result of a lawful marriage.

Tenn. Code Ann. § 29-8-101(a) and (b).

Tenn. Code Ann. § 29-8-102 provides:

> The application to change the name or to correct an error in a birth certificate shall be by petition, in writing, signed by the applicant and verified by affidavit, stating that the applicant is a resident of the county, and giving the applicant's reasons for desiring the change or correction.

You ask whether this statute allows a court of competent jurisdiction to change the name of a person who is not a U.S. citizen even though such a court would not have the ability to change the passport of that person. While this question has never been addressed in Tennessee, other states have considered the issue. Most of these opinions are based on an extension of the common law.

According to common law a person may change his or her name without court action by simply adopting and using a new name as long as it is not done for any fraudulent purpose. *In re: of Pirlamarla,* 504 A.2d 1238, 1240 (N.J. 1985); *In re: Lackey,* No. 01-A-01-9010-PB-00358, 1991 WL 45394 *1 (Tn. Ct. App., M.S., April 5, 1991); 57 Am Jur 2d § 16. This right has been extended to aliens. *In re: Novogorodskaya,* 429 N.Y.S.2d 387 (N.Y. Civ. Ct. 1980); 57 Am. Jur. 2d § 35. When a state has adopted a statute regarding name changes it is generally considered as supplementary to and not in derogation of the common law. *Pirlamarla,* 504 A.2d at 1240; *Lackey,* 1991 WL 45394, at *1; 57 Am Jur 2d § 17. In addition there are several advantages to the statutory method of obtaining a name change - it is quick, definite and it provides a record of the change which can be easily proven. *Lackey,* 1991 WL 45394, at *1; 57 Am Jur 2d § 17.

When construing a statute courts give the language of the statute its natural and ordinary meaning. *Wayne Co. v. Tennessee Solid Waste Disposal Board,* 756 S.W.2d 274, 282 (Tenn. Ct. App. 1988); *City of Lenoir City v. City of Loudon,* 571 S.W.2d 297 (Tenn. 1978). The legislature could have easily

used the word "citizen" had they intended to limit the use of the name change procedure in Tenn. Code Ann. § 29-8-101, *et seq.* to United States citizens. Instead, the legislature chose the word "resident" and thereby opened this procedure up to any resident of the county, regardless of citizenship.

As mentioned above, there is no Tennessee case law addressing this question; however, several other states have decided the issue. While there are cases on both sides of the issue, the majority of courts have held that an alien may be granted a name change. In *Application of Lipschutz,* a New York court allowed a French family to change their names after having been in this country just a few months. *Application of Lipschutz,* 32 N.Y.S. 2d 264 (N.Y. Sup. Ct. 1941). The basis of the decision was that, since a person may change his or her name without approval of a court and it is more useful to have the date and circumstances of a name change memorialized in court records, it was appropriate for the court to approve the name change. *Lipschutz,* 32 N.Y.S. 2d at 264.

In *Novogorodskaya,* another New York court granted a refugee's application for a name change, 429 N.Y.S.2d at 388. In so doing, the court relied upon Section 60 of the Civil Rights Law of New York which required that an applicant for a name change establish "residency" but made no reference to citizenship. *Novogorodskaya,* 429 N.Y.S.2d at 388.

In a very thorough and well analyzed opinion, the Superior Court of New Jersey granted the name change application of a permanent resident alien in *Pirlamarla,* 504 A.2d 1238 (N.J. 1985). The court began with an analysis of the common law right to change one's name. *Pirlamarla,* 504 A.2d at 1241. Additionally, the court looked at the relevant statute which allowed "any person" to seek a name change and the fact that courts are given broad discretion to authorize name changes absent any fraudulent purpose or overriding public policy militating against the change. *Pirlamarla,* 504 A.2d at 1241. In granting the name change, the court wrote:

> An articulable public policy favors a decision that would allow an individual like the petitioner, with unimpeachable immigration status and deep roots in the community, to assume a new name. Most immigrants enter the United States with some measure of confidence that their lives will be better in our great country. To be fettered by an unwanted name would substantially interfere with this petitioner's ability to experience the legitimate blessings of freedom. This is especially unjustifiable because there is no statutory obstacle to a favorable disposition of her application.

Pirlamarla, 504 A.2d at 1241.

Most recently the Court of Appeals of Texas addressed the issue in the context of a paternity proceeding. *In the Interest of Gonzalez,* 993 S.W.2d 147 (Tex. Ct. App. 1999). In *Gonzalez,* the newly established father argued that a Texas court did not have the authority to change his child's name to incorporate the father's name because the child was not a U.S. citizen. *Gonzalez,* 993 S.W.2d at 161. The court, finding no authority for such an argument, held that it was proper to change the child's name

based upon the fact that the trial court had personal and subject matter jurisdiction over the paternity proceeding. *Gonzalez,* 993 S.W.2d at 161.

While *Lipschutz, Novogorodskaya,* and *Pirlamarla* all involved persons whose immigration status allowed them to remain in the United States permanently, none of those decisions relied on that fact in their analysis. It is unclear from the court's opinion in *Gonzalez* what the immigration status of the child was although it did make clear that she was a Mexican citizen. As a practical matter, it would seem that the court would have to have some documentation of the person's name before it could change a name. In addition, the court should be satisfied that the name change is not requested for any fraudulent purpose.

In 1910 a New York court denied an application for a name change, stating that the application failed to allege that the applicant had been a citizen of the United States for at least six months. *In re: Burstein*, 124 N.Y.S. 989, 990 (N.Y. Civ. Ct. 1910). However, the later decisions of the New York courts in *Application of Lipschutz* and *Novogorodskaya* largely undermine this case. *Application of Chan* is another case in which a court refused to change the name of an alien. *Application of Chan,* 426 F. Supp. 680 (S.D.N.Y. 1976). However, this case was slightly different in that it denied Mr. Chan's application for an order amending his certificate of naturalization. *Application of Chan,* 426 F. Supp. at 681. In discussing the options available to the applicant, the court specifically mentioned that he could petition the state court to legally change his name. *Application of Chan,* 426 F. Supp. at 681.

Your question additionally mentions the fact that Tennessee courts do not have jurisdiction to change the passports of non-citizens. It is the opinion of this office that whether or not to change a person's passport to reflect a judicial name change is an issue to be resolved by the individual country issuing the passport. Interestingly, regulations dealing with the issuance of passports by the United States contemplate that an applicant may demonstrate a name change either by providing a copy of the order changing the applicant's name or by evidence that the applicant has used another name exclusively over an extended period of time. 22 C.F.R. § 51.24.

For the reasons outlined above, it is the opinion of this office that the circuit, probate and county courts of Tennessee have jurisdiction to grant an application for a name change regardless of whether the person is a United States citizen as long as the individual meets the other requirements of the statute.

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