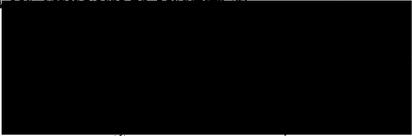




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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE [Redacted]

Office: Portland (POM)

Date: AUG 03 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of
the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Portland, Maine, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Israel on March 10, 1964, and is a citizen of Canada. The applicant's alleged father, Anthony Schroyer, was born in the United States in May 1941. The applicant's mother, [REDACTED] was born in Morocco in December 1945 and never became a U.S. citizen. The applicant's parents never married each other. The applicant seeks a certificate of citizenship based upon his claim that he acquired United States citizenship through his father as a child born out of wedlock or as a child legitimated before age 21 under the law of the father's or his own residence or domicile under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined the applicant had failed to submit a birth certificate of his alleged father and that the applicant's paternity had not been established prior to the applicant's 21st birthday. The district director denied the application accordingly.

On appeal, the applicant submits a copy of [REDACTED] birth certificate reflecting his birth in Scottdale, Pennsylvania, in May 1941. The applicant also states that his correct year of birth was 1964 and not 1974 as indicated in the district director's decision. The applicant states that the district director cited the wrong section of the Act and then cited the present section of the Act in effect on November 14, 1986, to establish his point.

Section 309(a) of the Act was rewritten by section 13 of the Immigration and Nationality Act Amendments of 1986 (Pub. L. 99-653), as amended by section 8(k) of the Immigration Technical Corrections Amendments of 1988 (Pub.L. 100-525, Stat. 2617) and was effective as of the date of enactment, November 14, 1986. The "old" section 309(a) applies to any individual who had attained 18 years of age as of the date of the enactment of the revised section 309(a). The applicant was 22 years and 6 months old on November 14, 1986. Therefore, "old" section 309 applies in this matter, and the district director correctly cited and applied that section of the Act in his decision.

The text of "old" section 309(a) of the Act is as follows:

The provisions of paragraphs (c), (d), (e), and (g) of section 301, and paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act [viz., December 24, 1952], if the paternity of such child is established while such child is under the age of 21 years by legitimation.

INTERP. 309.1(b)(2)(i) provides, in part, that if the paternity of an illegitimate child born on or after December 24, 1952, is established by legitimation during minority, citizenship vests at

birth, upon compliance with the provisions of the statute relating to the acquisition of such status by the legitimate child in section 301 of the Act, providing the legitimation takes place while the child is unmarried.

Legitimation of children born out of wedlock may be accomplished by the subsequent marriage of the natural parents or through a legally recognized means which grants such children the same legal status as children born in wedlock. See Matter of Reyes, 17 I&N Dec. 512 (BIA 1980). Acknowledgement is not the same as legitimation. The applicant states that his purported father sent checks to him beginning in April of 1974. At that time, the applicant's claimed father lived in Ohio. Ohio law at that time required specific legal action in the Ohio probate court in order to establish legitimation. See OH ST RC § 2105.18. Current Ohio State law provides that an action to determine the existence or nonexistence of the father and child relationship may not be brought later than five years after the child reaches the age of eighteen. See OH ST RC § 3111.05.

The district director discussed the germane aspects of the matter and noted that the results of a paternity test were entered into the record on September 24, 2001, reflecting a 99.99% likelihood of [REDACTED] being the applicant's father. However, that documentation was submitted when the applicant was 37 years and 4 months old and well beyond his 21st birthday. The record fails to contain the required documentation to establish that the applicant was legitimated by the marriage of his natural parents or through a legally recognized means in the natural father's or his own residence or domicile prior to the applicant's 21st birthday.

8 C.F.R. 341.2 provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence.

The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.