



U.S. Department of Justice

Immigration and Naturalization Service

EA

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

FILE: [Redacted] Office: Seattle

Date: AUG 11 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 309 and 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1409 and 1452(a)

IN BEHALF OF APPLICANT: [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Seattle, Washington, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant alleges that he was born in Portland, Maine, on November 20, 1976. This assertion is unsupported by a birth certificate, and the State of Maine refuses to issue a birth certificate based on the applicant's statements regarding his birth. The applicant's father is alleged to be Stephen Dale Locklear, who was born in the United States in July 1956. The applicant's mother is alleged to be [REDACTED] a native and citizen of Bulgaria. The applicant's alleged parents never married each other. The applicant seeks a certificate of citizenship under sections 301(g) and 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401 and 1409.

The applicant seeks a certificate of citizenship as a person who was born in the United States and based upon his claim that he acquired United States citizenship through his father as a child born out of wedlock.

The story of the applicant's alleged birth in a hotel room in Portland, Maine, the lack of formal records of the applicant's early life and the subsequent events have been thoroughly discussed by the district director and need not be repeated.

If the applicant was born in the United States, he acquired U.S. citizenship at birth under section 301(a) of the Act, 8 U.S.C. 1401(a), and the matter would be closed. However, the applicant has not sufficiently established that fact to enable the State of Maine to issue him a certificate of birth.

Sections 301(g) and 309(a) of the Act apply to persons born outside the United States. The Associate Commissioner will address the appeal under the theory that the applicant was born outside the United States.

The district director determined that the applicant had failed to establish that his father legitimated him before the applicant reached the age of 21 under the law of the father's domicile as required under section 309 of the Act. The district director denied the application accordingly.

Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old section 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act. The applicant was nearly 10 years old on November 14, 1986, therefore the present section 309 of the Act is applicable. "Old section 309 of the Act" allowed legitimation to occur prior to a person's 21st birthday. In the present amended version of the Act, legitimation must occur prior to the person's 18th birthday.

On appeal, counsel discusses various items of case law and concludes that the applicant is a United States citizen by virtue

of his birth in this country. That assertion is unsupported by a State of Maine Certificate of Birth. Counsel states that the applicant searched for his father and it was not until 1999 that he found his father. Counsel indicates that the two submitted to a DNA test confirming the fact that [REDACTED] was the applicant's father. On May 5, 1999, when the applicant was 22 years of age [REDACTED] swore to the fact that he is the legal and biological father of the applicant. Counsel states that the applicant has citizenship in no country.

Section 309 of the Act in effect on November 14, 1986, provides, in part, that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and paragraph (2) of section 308, 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 record fails to contain evidence that the applicant has satisfied section 309(a) (3) and (a) (4) of the Act.

8 C.F.R. 341.2(c) 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.

This decision is without prejudice to the applicant to continue to pursue his claim to birth in the United States with the State of Maine.

**ORDER:** The appeal is dismissed.