



EA

U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted] Office: Louisville (NOL)

Date: AUG 16 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act, 8 U.S.C. 1409

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, New Orleans, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order denying the appeal will be affirmed.

The applicant was born in Germany, on April 13, 1968. The applicant's alleged natural father, [REDACTED] is alleged to have been a United States citizen. The applicant's natural mother, [REDACTED] was born in Germany in August 1946 and never had a claim to U.S. citizenship. The applicant's natural parents never married.

On September 8, 1970, the applicant was adopted by [REDACTED] and [REDACTED] when the applicant was two years old. The applicant's adoptive parents, [REDACTED] married each other on March 26, 1964. The applicant seeks a certificate of citizenship 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 establish he acquired U.S. citizenship under section 320 or 322 of the Act, 8 U.S.C. 1431 or 1433, because his adoptive mother [REDACTED] never naturalized while the applicant was under the age of 18 years as required in section 320 of the Act. Neither was a certificate of citizenship issued to the applicant while he was under the age of 18 years as required under section 322 of the Act.

Counsel has provided evidence that the applicant's alleged natural father was a U.S. citizen. A copy of the applicant's travel document (Kinderausweis) contains an admission stamp reflecting that he was admitted to the United States at New York on January 14, 1980, as a returning resident (ARC) and not as a United States citizen as previously contended.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth.

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 18 years old in April 1986, therefore "old" section 309 of the Act applies.

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 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), pertinent to "old" section 309 of the Act, states that since December 24, 1952, if paternity of the illegitimate child born on or after 12/24/52 is established during minority, citizenship vests at birth, *jus sanguinis*, upon compliance with the provisions of the current statute relating to the acquisition of such status by the legitimate child, provided legitimation takes place while the child is unmarried.

INTERP 309.1(b)(2)(i) provides that the provisions of the current statute, providing that legitimation occur during minority, operate independently of the definition of legitimated child in section 101(c) of the Act, 8 U.S.C. 1101(c), and are satisfied by mere legitimation during minority notwithstanding that it occurred after age 16 years, or that the legitimating parent did not have legal custody of the child. Moreover, contrary to initial Service opinion, the provisions of section 101(c) of the Act permitting legitimation to take place under the law of the child's residence or domicile is likewise not applicable, and legitimation for the purposes of section 309 of the Act can be accomplished only in accordance with the law of the father's domicile.

On motion, counsel contends that the applicant was legitimated upon his adoption because an adopted child becomes the natural, legitimate child of the adopting parents and that act satisfies the last clause of the statute, "if the paternity of such child is established while such child is under the age of 21 years by legitimation."

INTERP 309(b)(3), relating to cases where paternity has actually been established, provides that there must be a natural (blood) relationship between the parent and child for the bestowal of citizenship upon the child even after the citizen parent acknowledges the child and marries the mother. Legitimation referred to in section 309 of the Act, contemplates legitimation by the natural father and not the adoptive father. See Matter of J-, 7 I&N Dec. 338 (BIA 1956).

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 motion will be dismissed, and the order dismissing the appeal will be affirmed.

ORDER: The motion is dismissed. The order of November 14, 2001, dismissing the appeal is affirmed.