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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



AUG 16 2002

FILE: [Redacted] Office: Tampa (MIA) Date:

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 Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Panama, on November 29, 1953. The applicant's father, [REDACTED] was born in the United States in November 1890. The applicant's mother, [REDACTED] was born in Panama, and became a naturalized U.S. citizen on March 27, 1986. The applicant's parents never married each other. The applicant was classified as a stepchild of a U.S. citizen and he was lawfully admitted for permanent residence in August 1971. He seeks a certificate of citizenship under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The acting district director determined the applicant had failed to establish he had been legitimated prior to the age of 18. The district director denied the application accordingly.

On appeal, counsel argues that documentation from the Social Security Administration shows an award of entitlements dated February 2, 1973. The certification states that it was a "child" type of benefit and the certification was based upon the applicant's relationship with his father, [REDACTED]

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 301(g) of the Immigration and Nationality Act was in effect at the time of the applicant's birth. This section specifically requires the applicant to establish that prior to the applicant's birth, the citizen parent must have resided in the United States or in an outlying possession for 10 years, at least 5 of which were after age 14.

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) applies to any individual who had attained 18 years of age as of November 14, 1986, the date the amendment was enacted. The applicant was 33 years old in November 1986.

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.

In Matter of Sinclair, 13 I&N Dec. 613 (BIA 1970), the Board held that, under the law of Panama, legitimation of a child born out of

wedlock in Panama was accomplished by the father's acknowledgement of paternity by a declaration before the Mayor of Colon.

The record contains a declaration by [REDACTED], age 36, made before the Auxiliary Registrar of Colon on December 7, 1953. There is no evidence on that document that [REDACTED] made that declaration and asserted that the applicant was his child as provided under the Constitution of Panama of March 1, 1946. Further, the record fails to identify Stanford Lewis and explain why he made the declaration.

The record also contains a birth certificate reflecting that [REDACTED] the applicant's father. The document in the record was issued on June 25, 1987, when the applicant was 33 years old. The record fails to contain the applicant's certificate of birth that was used when he applied for an immigrant visa in 1971. Should this matter appear before the Associate Commissioner again, it must be supported by the applicant's complete immigrant visa file.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age of 14 years, shall be nationals and citizens of the United States at birth.

According to consular notations in the record made on the visa petition filed at the American Embassy in Panama on July 22, 1971, [REDACTED] was unable to satisfy the physical presence requirements of section 301(g) of the Act. Therefore, even if evidence were produced to establish that Emanuel Jones satisfied the requirements of the Constitution of Panama and legitimated the applicant, he failed to meet the physical presence requirements necessary to transmit U.S. citizenship to the applicant.

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.