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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: New York

Date: NOV 15 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 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 York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in the Philippines on November 19, 1969. The applicant's father, [REDACTED] was born in Puerto Rico in November 1945. The applicant's mother, [REDACTED] was born in the Philippines and never had a claim to U.S. citizenship. The applicant's parents never married each other. 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 that paternity was established prior to her 21st birthday and denied the application accordingly.

On appeal, the applicant states that she has submitted enough evidence to prove that she and her father had a bona fide relationship since her 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 17 years old on November 14, 1986, therefore the applicant is eligible under "new" section 309(a) of the Act.

However, pursuant to the Immigration Technical Corrections Amendments of 1988 (Pub.L. 100-525, 102 Stat. 2617), an individual who is at least 15 years of age, but under 18 years of age as of the date of the enactment of this Act, may elect to have the old section 309(a) apply to the individual instead of the new section 309(a).

"New" Section 309 of the Act 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 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 the Philippines, legitimation is accomplished only through the marriage of the person's parents to each other. The "new" section 309(a) of the Act is more favorable to the applicant, and the application was adjudicated under that provision.

The record reflects that [REDACTED] filed a Petition for Alien Relative in behalf of the applicant, and she was classified as a "child" of a U.S. citizen on March 3, 1989, by a Service office. The applicant was issued an immigrant visa and was admitted to the United States as a lawful permanent resident on October 23, 1989, as the "child" of a U.S. citizen at the age of 19 years and 11 months. The applicant indicated on her immigrant visa application that she wanted to meet her father for the first time.

Documentation used to support the visa petition and immigrant visa application includes: (1) a Certificate of Baptism showing that the applicant was baptized on November 29, 1969, as the child of [REDACTED] (2) a delayed birth certificate dated February 1986, when the applicant was 16 years and 3 months old listing her parents as [REDACTED] (3) an affidavit signed by the applicant's mother on May 12, 1986, when the applicant was 16 years and 6 months old, in which the mother willingly gave custody of the applicant to the applicant's father and permission for her to join her father in New York; and (4) an affidavit of illegitimacy dated May 23, 1989, when the applicant was 19 years old, in which the mother states that the applicant carries the father's name because he acknowledged her as his daughter.

To be classified as a "child" for immigrant visa purposes, the parties need only to establish a bona fide parent-child relationship. However, she has failed to establish that she has satisfied the provisions of section 309(a)(3) of the Act for the purposes of acquiring U.S. citizenship. There is evidence to establish that the father acknowledged paternity of the applicant in writing and under oath pursuant to section 309(a)(4)(B) of the Act. The delayed birth certificate contains his signature under oath. The applicant was 16 years old at that time. However, although the record contains evidence that there was a bona fide parent-child relationship, there is no evidence that the father agreed in writing to provide financial support for the applicant until she reached the age of 18 years.

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's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over her place of residence.

**ORDER:** The appeal is dismissed.