

EA

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: HARTFORD, CT Date: AUG 16 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under sections 309 and 301 of the Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The July 2, 2003, AAO Order dismissing the appeal will be withdrawn and the appeal will be sustained.

The applicant was born out of wedlock on January 1, 1967, in Mandeville, Jamaica. The record reflects that the applicant's father [REDACTED] (Mr. [REDACTED]) was born in Mullins, South Carolina on January 6, 1905, and that he was a United States (U.S.) citizen. Mr. [REDACTED] died on June 26, 1985. The applicant's mother, [REDACTED] was born in Jamaica, and she was not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director concluded the applicant had failed to establish that her parents were legally married or that she was legitimated by her father. The application was denied accordingly. The AAO affirmed the district director's decision on appeal.

On motion to reconsider, counsel asserts that the AAO misinterpreted Jamaican legitimation requirements and that the applicant was legitimated under Jamaican law, and meets all other requirements set forth in section 309 of the Act. Counsel asserts that the evidence establishes further that Mr. [REDACTED] satisfied the U.S. physical presence requirements set forth in section 301 of the Act, and that the applicant is therefore entitled to derivative U.S. citizenship status.

8 C.F.R. § 103.5(a)(3) states in pertinent part:

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel asserts that the Board of Immigration Appeals (Board) decision used by the AAO to interpret legitimation requirements in Jamaica (*Matter of Clahar*, 16 I&N Dec. 484, 489 (BIA 1978)), was overruled by the Board in its 1981 decision, *Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981). Counsel asserts that the AAO's decision and Order were therefore based on an incorrect application of law. Counsel asserts further that the 1981, *Matter of Clahar* decision clearly establishes that the applicant was legitimated by her father under Jamaican law, and that the applicant meets the requirements set forth in section 309 of the Act.

Upon review of the 1981, *Matter of Clahar*, decision, *supra*, the AAO finds counsel's assertions to be convincing. In the 1981, *Matter of Clahar* decision, the Board found that pursuant to the 1976, Jamaican Status of Children Act, all distinctions between legitimate and illegitimate children in Jamaica are abolished once paternity over a child is established. The AAO notes that Section 8 of the Jamaican Act states further that paternity may be demonstrated through specific documents, including a birth certificate reflecting the father's name. The record in the present case contains a copy of the applicant's birth certificate stating that [REDACTED] is her father. Accordingly, the AAO finds that Mr. [REDACTED] paternity over the applicant was established at the time of her birth in 1967, and that

because the applicant was only nine-years-old when the Jamaican Status of Children Act became effective, she was legitimated under Jamaican law in 1976.

Prior to November 14, 1986, section 309 of the former Act required that paternity be established by legitimation while the child was under twenty-one. Subsequent amendments made to the Act in 1986, provided that a new section 309(a) would apply to persons who had not attained eighteen years of age as of the November 14, 1986, date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided further that the former section 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See section 13 of the INAA, supra. See also section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.*

In the present case, the applicant was born prior to November 14, 1986, and was over the age of eighteen on November 14, 1986. In addition, paternity was established by legitimation prior to November 14, 1986. The AAO will therefore look to section 309 legitimation requirements as they existed prior to November 14, 1986.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

As noted above, the record reflects that the applicant was legitimated under Jamaican law when she was nine years old. She therefore meets the legitimation requirements set forth in section 101(c) of the Act. Moreover, the AAO notes that, "[W]here a child born out of wedlock has been properly legitimated, neither parent will be presumed to have a greater right than the other to the legal custody of that child." *See Matter of Rivers, 17 I&N Dec. 419, 421 (BIA 1980).* The AAO finds that the record establishes an un rebutted presumption that [redacted] and the applicant's mother shared full legal custody over the applicant at the time of legitimation. Accordingly, the applicant meets the definition of "child" as set forth in section 101(c) of the Act, and she meets the requirements of section 309 of the former Act.

For children born to a U.S. citizen father between December 24, 1952 and November 14, 1986, sections 309 of the former Immigration and Naturalization Act (former Act) and 301(a)(7) of the former Act (now known as section 301(g) of the Act) apply for adjudication purposes.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states that the following shall be nationals and citizens of the United States at birth:

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 ten years, at least five of which were after attaining the age of fourteen years: *Provided, That any periods of honorable service in*

the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

In the present case, the applicant must establish that her father served honorably in the U.S. Armed Forces or was physically present in the U.S. or its outlying possessions for ten years between January 6, 1905 and January 1, 1967, and that five of those years occurred after January 6, 1919. The record contains birth certificate evidence establishing that [REDACTED] was born in the United States in 1905. The record additionally contains military record evidence reflecting that except for the years 1946, 1948 and 1965, Mr. [REDACTED] served honorably for the U.S. Merchant Marines and as a Seaman in the military from 1940 to 1966. The record also contains general Social Security Administration, Summary of Earnings evidence reflecting that between 1937 and 1950, Mr. [REDACTED] earned \$15,295.83, and that between 1951 and 1982, he earned \$93,267.73.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true

The AAO finds that the evidence contained in the record establishes, by a preponderance of the evidence, that the applicant's father meets the physical presence requirements set forth in section 301(a)(7) of the former Act. Accordingly, the applicant has met her burden of establishing that she qualifies for U.S. citizenship under sections 309 and 301 of the Act. The previous AAO Order will therefore be withdrawn and the applicant's appeal will be sustained.

ORDER: The motion to reconsider is granted. The July 2, 2003, AAO Order dismissing the appeal is withdrawn and the appeal is sustained.