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



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]

Office: PHOENIX, AZ

Date: JUL 13 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 application was denied by the Acting District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 4, 1973, in Sweden. The applicant's father, Jacob Corcos (Mr. Corcos), was born on February 26, 1937, in Morocco, and he became a naturalized United States (U.S.) citizen on June 20, 1967. Mr. Corcos died on October 8, 1992. The record reflects that the applicant's mother, Frida Fikke, was born in Norway and that she is not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship under 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 father.

The acting district director found the applicant had failed to establish that her father met U.S. physical presence requirements set forth in sections 309 and 301 of the Act. The application was denied accordingly.

On appeal, counsel asserts that affidavit and Social Security statement evidence, as well as information contained on Mr. Corcos' 1967, Form N-400, Application for Naturalization (N-400 application) establish by a preponderance of the evidence that the applicant's father was physically present in the U.S. for the requisite time period set forth in sections 309 and 301 of the Act.

Because the applicant was born out of wedlock, derivative citizenship provisions set forth in section 309 of the Act apply to her case. Prior to November 14, 1986, section 309 of the former Immigration and Nationality Act (former Act) required that a father's paternity be established by legitimation while the child was under twenty-one. Amendments made to the Act in 1986, provided that a new section 309(a) would apply to persons who had not attained 18 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, however, that the former section 309(a) applied to any individual who had attained 18 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.

Section 309 of the amended Act states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . 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.

In the present case, the record reflects that the applicant was under the age of 18 on November 14, 1986. Section 309 of the amended Act would therefore apply to the applicant's case. The AAO finds that although the applicant has satisfied the requirements set forth in section 309(a)(1), (2) and (4) of the Act, the record contains no evidence to indicate or establish that Mr. Corcos agreed in writing at any time prior to the applicant's 18th birthday, to provide financial support for the applicant. Accordingly, the AAO finds that the applicant does not qualify for a certificate of citizenship under section 309 of the amended Act.

The AAO notes further that in order to qualify for a certificate of citizenship under section 309 of the former Act, the applicant must establish that paternity was established by legitimation prior to her 21st birthday, and that she meets the definition of "child" set forth in section 101(c) of the Act.

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 [21] years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The acting district director did not make a finding as to whether the applicant was legitimated or not. Nor was the issue addressed on appeal by counsel. The AAO notes that the evidence in the record indicates that the [redacted] residence or domicile was in Florida at the time that the applicant's paternity was established in 1975, and that according to Florida Statutes § 742.091, legitimation of a child occurs only by intermarriage of the parents. It is unclear from the record however, whether [redacted] resided in Florida after 1975, or whether he moved to another State where different legitimation laws might have been in effect. The AAO notes further that the applicant's place of residence or domicile prior to her 21st birthday was in Sweden. The record contains a 1975, Swedish Court Order establishing [redacted] paternity over the applicant prior to November 14, 1986, when the applicant was one year old. It is unclear however, whether a court ordered decree of paternity is sufficient to establish legitimation of a child under Swedish law.

In spite of the acting district director's failure to make a finding regarding whether the applicant was legitimated for section 309 of the former Act purposes, the AAO finds that the present case does not need to be remanded for further action because the applicant has failed to establish that her father meets the physical presence conditions required for the applicant to obtain derivative citizenship under section 301 of the Act. The applicant would therefore be ineligible for a certificate of citizenship whether or not she established that she was legitimated prior to her 21st birthday.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born on December 4, 1973. Section 301(a)(7) of the former Act is therefore applicable to his derivative citizenship claim.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The applicant must establish that her father was physically present in the U.S, for 10 years between February 26, 1937, and December 4, 1973, and that at least five years occurred after February 26, 1951.

The record contains the following evidence relating to [REDACTED] residence in the United States:

A Form N-400 application, filed by [REDACTED] on March 2, 1967, in which Mr. Corcos stated under oath that he resided in Pennsylvania from July 17, 1961 to January 31, 1963, and in New York from February 1, 1963 to the date of filing his N-600 application on March 2, 1967. The N-600 application additionally stated that [REDACTED] did not work between July 1961 and May 1966 because he was a student during that time.

A notarized affidavit signed by [REDACTED] ex-wife, [REDACTED] on October 15, 2003, stating that [REDACTED] was physically present in the U.S. during part of 1961, and from 1962 through part of 1972 and part of 1973. The affidavit states further that [REDACTED] lived with [REDACTED] in Pennsylvania from 1961 to 1963, and in New York from 1963 to 1966, and the affidavit states that [REDACTED] attended technical school in New York in 1965.

A Social Security Administration Retirement, Survivors and Disability Insurance Earnings Record (Social Security statement) dated February 25, 2001, reflecting that the applicant was employed by:

A Pennsylvania Cab company from July 1961 to December 1962
(earnings -\$116.70);

A New York Service Station from July 1967 to March 1968 (earnings - \$3425.00);

A Pennsylvania Auto Service company from October 1968 to March 1969 (earnings \$1100.15);

Self-employed in 1969 (earnings \$2256.00), in 1970 (earnings - \$3399.00) and in 1971 (earnings \$1734.00)

A Pennsylvania Service company and residence company from October to December 1973.

The AAO finds that the evidence presented establishes that [REDACTED] was physically present in the U.S. between July 1961 and March 1969, and between October 1973 and December 1973 (approximately eight years). The AAO finds that [REDACTED] statement contains no details regarding where [REDACTED] lived between 1967 and 1973, or regarding her personal knowledge of his whereabouts during that time. The AAO finds further that although the Social Security statement evidence reflects that [REDACTED] reported self-employment earnings in 1970, 1971 and 1972, the statement does not establish where or when [REDACTED] worked during those years or that he resided in the United States during those years. Accordingly, the AAO finds that the applicant failed to establish that her father was physically present in the U.S. for a period of ten years prior to her birth, or that she is eligible for a certificate of citizenship under section 301 of the Act.

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. The applicant failed to meet her burden in the present case and the appeal will be dismissed.

ORDER: The appeal is dismissed.