



U.S. Citizenship  
and Immigration  
Services

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ER

FILE:

Office: BOSTON

Date: AUG 19 2005

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

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

**DISCUSSION:** The application was denied by the District Director, Boston, Massachusetts, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Germany on December 11, 1953. The applicant's father was a native-born U.S. citizen. The applicant's mother became a naturalized U.S. citizen in 1974. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to §§ 309 and 301 of the former Immigration and Nationality Act (the former 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 denied the application after concluding that the applicant had failed to establish that she was legitimated by her father prior to her eighteenth birthday. The district director erroneously applied current §§ 301 and 309 of the Act, while given the applicant's date of birth, he should have applied §§ 301 and 309 of the former Act. The AAO finds that the district director's error was harmless, however, as the applicant does not qualify for a certificate of citizenship under the former provisions, as will be discussed below.

On appeal, counsel asserts that the applicant's father publicly recognized her, thus legitimating the applicant pursuant to Tennessee law prior to her eighteenth birthday. Counsel also erroneously applies current provisions of the Act in her brief on appeal. The AAO has reviewed the entire record in light of the provisions of law applicable to the applicant's situation and concludes that the applicant is not eligible for a certificate of citizenship.

"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 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in the present matter was born in 1953; therefore, § 301(a)(7) of the former Act applies to the present case.

Section 301(a)(7) of the former Act 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) 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.

In order to meet the definition of "child" prior to November 14, 1986, § 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 § 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 that the former § 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, or with respect to whom paternity had been established by legitimation prior to the same date. *See § 13 of the INAA, supra. See also § 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.*

In the present matter, the applicant was over the age of eighteen on November 14, 1986. Her claim therefore falls under § 309(a) of the former Act. Accordingly, the applicant must establish that she was legitimated by his father prior to her twenty-first birthday, under the law of the applicant's or her father's residence or domicile. Applicable legitimation laws thus include those of Germany, Tennessee, Maine, and Connecticut.

Counsel only addresses current Tennessee law regarding the establishment of paternity. Under current Tennessee law, paternity is presumed where the father accepts the child into his home and holds the child out as his own. Under current Tennessee law, when paternity is established, the child is legitimated. The law was different at the time the applicant was a minor, however. At that time, in order to legitimate a child born out of wedlock, the laws of Germany, Tennessee, Maine, and Connecticut all required a court order or the father's declaration filed with a court or made before a justice of the peace or notary. Although the record contains a February 4, 2004 court order declaring the applicant to be legitimated as of the date of her birth, this act of legitimation did not occur prior to the applicant's twenty-first birthday. The record does not contain any written instrument or other evidence that her father legitimated her before her twenty-first birthday. The applicant therefore did not meet the definition of a "child" for the purposes of citizenship under § 301(a)(7) of the former Act.

The applicant has failed to establish that she is eligible for a certificate of citizenship pursuant to § 301(a)(7) of the former 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 has failed to meet her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.