



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: ATLANTA

Date: AUG 19 2005

IN RE:

Applicant:

[Redacted]

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

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be remanded to the district director for entry of a new decision.

The record reflects that the applicant was born in Korea on May 20, 1973. The applicant's father is a U.S. citizen. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents married on November 21, 1973. The applicant seeks a certificate of citizenship pursuant to § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded the applicant had failed to establish that his father legitimated him prior to his eighteenth birthday. The application was denied accordingly. On appeal, the applicant indicates, through his father, that he was legitimated by his father prior to his eighteenth birthday, and that he is entitled to U.S. 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 (9th Cir., 2000) (citations omitted). The applicant was born in 1973; therefore, § 301(a)(7) of the former Act applies to his application for citizenship.

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" for purposes of § 301(a)(7) derivative citizenship, the applicant must demonstrate that he meets the requirements set forth at § 309(a) of the current, amended Act. Section 309 of the amended Act states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 [formerly § 301(a)(7)] . . . 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 record contains the results of a 2002 DNA test establishing the blood relationship between the applicant and his father, who was a U.S. citizen at the time of the applicant's birth. The documentation thus establishes subsections 1 and 2 above. The record also includes an Affidavit of Support Form I-134 dated March 8, 1974 and a typed affidavit of support and invitation dated June 11, 1973 in both of which the applicant's father promised under oath to support the applicant and his mother. The AAO finds that these documents establish the third provision of this section.

On the applicant's Application for Adjustment of Status Form I-485, dated June 5, 1974, and in both of the Affidavits of Support mentioned above, the applicant's father acknowledged in writing under oath that the applicant was his son. The district director stated that on the I-485, the applicant's father listed the applicant's relationship to him as "fiancee's son." The I-485 indicates that the applicant entered the United States as the child of a fiancee, and that this category was the basis for the adjustment of status, but in response to question #17B, it is clearly stated that the applicant entered the United States in order to join his father. His father also prepared the I-485 and signed the form under oath on behalf of the applicant, who was an infant at the time. The AAO finds that the documentation on the record constitutes a sworn acknowledgment of paternity on the part of the applicant's father, in compliance with § 309(a)(4)(B) of the Act.

The applicant therefore meets the requirements set forth at § 309 of the Act; hence, he is eligible to apply for citizenship under § 301(a)(7) of the former Act. Consequently, the applicant must establish that his father was physically present in the United States for a total of ten years between October 29, 1948 and May 20, 1973, at least five of which were after attaining the age of fourteen years on October 29, 1962. The district director must afford the petitioner reasonable time to provide evidence pertinent to the issue of his father's physical presence and any other evidence the district director may deem necessary. The district director shall then render a new decision based on the evidence of record. As always, the burden of proving eligibility for the benefit sought remains entirely with the claimant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's November 30, 2004 decision is withdrawn. The petition is remanded to the district director for entry of a new decision, which if adverse to the applicant, is to be certified to the AAO for review.