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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: LAS VEGAS, NEVADA Date: JUL 08 2005

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under § 309 of the former 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, Las Vegas, Nevada, 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 August 25, 1956. The applicant's father was a U.S. citizen by birth. The applicant's mother is not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to § 309 of the former Immigration and Nationality Act (the former 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 he was legitimated by his father prior to his twenty-first birthday. The application was denied accordingly. On appeal, counsel contests the constitutionality of the application of § 309(a) of the Act and notes that the scientific evidence currently available to prove paternity did not exist at the time of the applicant's birth. Counsel also asserts that congressional intent should determine the retrospective applicability of laws regarding immigration benefits.

Counsel contends that certain provisions of the citizenship laws, including the statute governing the requested benefit, are unconstitutional. The AAO observes that, like the Board of Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992). "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 in the present matter was born in 1956; hence, § 301(a)(7) of the former Act applies to the present case.

In the present matter, the applicant was born prior to November 14, 1986, and he was over the age of eighteen on November 14, 1986. The AAO will therefore assess the applicant's claim pursuant to § 309(a) requirements under the former Act, which states:

The provisions of paragraphs (3), (4), (5) and (7) of section 301(a) and of 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, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Accordingly, in order to derive citizenship at birth through his father, the applicant must establish that he was legitimated by his father prior to his twenty-first birthday, under the law of the applicant's residence or domicile (Germany), or under the law of his father's residence or domicile (North Carolina).

The record contains a German birth certificate which does not list the applicant's father. The record also includes a German court document dated October 5, 1956 indicating that the applicant's father did not present himself for a child support hearing. Also, the applicant's cousins executed affidavits dated August 4 and 6, 2003 in which they stated that the applicant had attempted to locate his U.S. citizen father for years, but was not successful until after his father had already passed away. German and North Carolina laws provide that, in the absence of the intermarriage of child's parents, a child may be legitimated upon specific legal actions taken by the child's father. In the present case, the applicant's father took no legal action in order to legitimate the applicant.

Accordingly, the AAO finds that the applicant has failed to establish that he was legitimated by his father, as required by § 309 of the former Act; hence, he is ineligible to derive citizenship at birth through his father.

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 his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.