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U.S. Citizenship
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APR 2008

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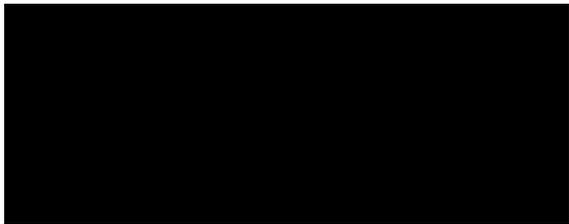
Applicant:



APPLICATION:

Application for Certificate of Citizenship under § 301 of the former Immigration and Nationality Act, 8 U.S.C. § 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, Philadelphia, Pennsylvania, 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 Jamaica on July 20, 1974. The applicant's father was born in Minnesota on September 21, 1944, and he is a U.S. citizen. The applicant's mother was born in Jamaica, and she became a naturalized U.S. citizen in 2000. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to § 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, 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 all the statutory provisions applicable to individuals born out of wedlock to U.S. citizen fathers. The district director noted that the record contains no written agreement by the applicant's father to provide financial support to the applicant until the latter reached the age of eighteen, nor was the applicant legitimated prior to his eighteenth birthday. The application was denied accordingly.

On appeal, counsel asserts that *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981) supports the applicant's claim that he was legitimated under Jamaican law prior to his eighteenth birthday. Counsel also contends that affidavits recently executed by the applicant's father and mother indicating that the applicant's father sent clothing and money to a friend of the applicant's mother's for distribution to the applicant until he was approximately twelve years old meet the statutory requirement regarding a written statement of financial support. The AAO finds these assertions unpersuasive and concurs with the district director's determination that the applicant failed to establish all of the statutorily required elements pertaining to children born out of wedlock.

Counsel also contends on appeal that Citizenship and Immigration Services (CIS) violated its own procedures by failing to request further evidence before denying the application. In the event that the district director committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The applicant has, in fact, supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the applicant the opportunity to supplement the record with new evidence.

"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 1974; hence, § 301(a)(7) of the former Act therefore 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.

Because the applicant was born out of wedlock, derivative citizenship provisions set forth in § 309 of the Act apply to his case. Prior to November 14, 1986, § 309 of the 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 § 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, and also to individuals 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 twelve years old on November 14, 1986, and he had not yet been legitimated by that date. His case will therefore be considered pursuant to the provisions of § 309(a) of the 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 . . . 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 instant case, the evidence meets the requirements of subsections (1) and (2) above, but fails to establish subsections (3) and (4). The result of a 2004 DNA test submitted for the record establishes the existence of a blood relationship between the applicant and his father. The record also establishes that the applicant's father was a U.S. citizen at the time of the applicant's birth. The record, however, does not contain any written agreement on the part of the applicant's father to provide financial support for the applicant until his eighteenth birthday. In addition, the applicant was not legitimated while he was still under the age of eighteen.

Counsel maintains that the district director was in error in requiring written documentation as described in § 309(a)(3) of the amended Act, and counsel asserts that the applicant's parents' recently executed affidavits meet the burden of proof of establishing that such a written agreement existed. Although it is not necessary to produce a legally enforceable contract to fulfill the requirement of § 309(a)(3) of the amended Act, the

plain language of the statute indicates that more is required than a relatively vague statement, almost twenty years after the fact, to the effect that the applicant's father sent the applicant what he could, when he could. The record contains no independent, corroborative evidence that the applicant's father executed a written agreement to support the applicant until 1992, when the latter turned eighteen. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO concurs with the district director's assessment that the evidence on the record is insufficient to establish that the applicant's father had agreed in writing to financially support the applicant until his eighteenth birthday.

Counsel also asserts that the applicant was legitimated while he was under the age of eighteen pursuant to the Jamaican Status of Children Act of 1976 (JSCA). The JSCA guarantees that all children whose paternity has been admitted or established should enjoy the same legal rights to succession, inheritance, etc., whether their parents are married to each other or not. The JSCA contains explicit provisions pertaining to proof of paternity. Pursuant to the JSCA § 8, paternity may be demonstrated through specific documents, including a birth certificate reflecting the father's name, a legal acknowledgement signed by the mother and the father, or a court decree as to the paternity. The applicant's father is not listed on his birth certificate, nor does the record contain any documentation reflecting the acknowledgement or recognition of paternity prior to 2004. The fact that the applicant began using his father's last name while he was a child does not establish paternity. Also, the applicant's father's 1976 telephonic acknowledgement of the applicant to his mother does not constitute establishment of paternity for JSCA legitimation purposes. The applicant's parents' 2004 affidavits and the DNA test result of 2004 are the earliest written documents that could be considered to establish paternity.

Counsel asserts that the holding in *Matter of Clahar, Supra.*, supports his position regarding the timeliness of the applicant's legitimation. The AAO disagrees. In *Matter of Clahar*, the Board of Immigration Appeals held that children under the purview of the JSCA may be considered to be legitimate or legitimated within the meaning of § 101(b)(1) of the Act, as long as the familial tie has been established by the requisite degree of proof, and the status arose within the time frame provided in § 101(b)(1) of the Act. *Matter of Clahar* dealt with an immigrant visa petition rather than an application for a certificate of citizenship; nevertheless, the primary challenge to counsel's interpretation that the JSCA "legitimizes" the applicant for the purposes of § 309(a)(4)(A) is that paternity in the applicant's case was not recognized while the applicant was under the age of eighteen. Therefore, even though the applicant may have been legitimated pursuant to the JSCA in 2004, as this occurred after he was eighteen years old, he does not meet the statutory requirement set forth at § 309(a)(4) of the amended 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 his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.