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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: **AUG 09 2006**

IN RE: APPLICANT: [REDACTED]

APPLICATION: **Application for Certificate of Citizenship pursuant to Section 309(c) of the Immigration and Nationality Act; 8 U.S.C. § 1409(c).**

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Germany on October 21, 1990. The applicant's father, [REDACTED] was born in North Carolina on [REDACTED] and he is a U.S. citizen. The record does not contain clear evidence of the nationality of the applicant's mother, [REDACTED] yet the applicant indicates that he entered the United States pursuant to his inclusion on her Trinidad passport. There is no indication or evidence that the applicant's mother is a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship based on the claim that he derived U.S. citizenship at birth through his father.

The director found that the applicant failed to establish that his father was continuously present in the United States for a period of five years, at least two of which were after age 14, prior to the applicant's birth. *Decision of the Director*, dated January 12, 2006. The director further commented that the applicant failed to submit a written statement from his father, made under oath, attesting that the applicant's father will provide financial support for him until he reaches the age of 18. *Id.* at 2. The application was denied accordingly.

On appeal, the applicant's father states that he has been in the United States for his entire life. *Statement on Form I-290B*, submitted March 28, 2006. **The applicant further provides that he submits financial documentation to show that his father provides support for him.** *Id.*

The record contains a statement from the applicant's father; copies of the applicant's father's high school transcripts and diploma; a voluntary child support order executed by the applicant's father; evidence that the applicant's father has made regular child support payments and that he arranged with his bank to have payments automatically drafted from his account; copies of the applicant's father's military records; a document in which the applicant's mother affirms the paternity of the applicant; a document in which the applicant's father affirms his paternity of the applicant; the applicant's father's birth certificate, and; the results of a paternity test that reports a 99.99% chance that the applicant's alleged father is his biological parent. The entire record was considered in rendering this decision.

Section 341(a) of the Act states the following:

(a) A person who claims to have derived United States citizenship through the naturalization of a parent . . . may apply to the Attorney General [now Secretary of the Department of Homeland Security] for a certificate of citizenship. Upon proof to the satisfaction of the [Secretary] that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, such individual shall be furnished by the [Secretary] with a certificate of citizenship, but only if such individual is at the time within the United States.

“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 record reflects that the applicant was born out of wedlock on October 21, 1990. Section 309 of the Act therefore applies to his citizenship claim.

Section 309(a) of the Act sets requirements for citizenship for children born out of wedlock, in pertinent part, as follows:

The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of paragraph (2) of section 308, 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.

Section 301(g) of the Act further provides citizenship to:

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 five years, at least two 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, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph.

The applicant's father states that he has resided in the United States for his entire life. On appeal, the applicant provides copies of his father's high school transcripts that reflect that his father attended school in Greensboro, North Carolina from 1985 to 1989. A U.S. military enlistment record reflects that the applicant's father became a private in the U.S. military on October 4, 1989, and he was stationed in South Korea from April 11, 1990 until August 10, 1991, a period including the applicant's birth date. The applicant's father's military service abroad qualifies as physical presence in the United States for the purpose of satisfying the residency requirement of section 301(g) of the Act. In aggregate, the evidence of record establishes that the applicant's father accrued physical presence in the United States from the time he entered high school, estimated to begin in September of 1985, until the applicant's birth, on [REDACTED]. This period totals

approximately five years and two months of physical presence in the United States prior to the applicant's birth, over two years of which were at a time when the applicant's father was over the age of 14.

Pursuant to section 301(g) of the Act¹, the applicant must show that his father accrued at least five years of physical presence in the United States prior to the applicant's birth. As discussed above, the applicant has provided adequate evidence to establish that his father meets this requirement.

The director commented that the applicant failed to submit a written statement from his father, made under oath, attesting that the applicant's father will provide financial support for him until he reaches the age of 18. However, on appeal the applicant has provided sufficient evidence to show that his "father . . . has agreed in writing to provide financial support for [him] until [he] reaches the age of 18 years." Section 309(a)(3) of the Act. Specifically, the record contains a child support order in which the applicant's father voluntarily agreed to provide monthly financial support for the applicant. The record contains evidence that the applicant's father has made regular child support payments and that he arranged with his bank to have payments automatically drafted from his account. It is noted that, contrary to the suggestion of the district director, the applicant is not required to submit a pledge of support from his father that was executed under oath. Such a requirement is not found in the Act or regulations. The AAO finds the documentation in the record sufficient to meet the requirement of Section 309(a)(3) of the Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has met his burden in the present matter. The appeal will therefore be sustained and the application will be approved.

ORDER: The appeal is sustained.

¹ The director indicated in her decision that the applicant failed to show that his father met the residency requirements of section 309 of the Act. However, the residency requirements for the applicant's father are contained in section 301(g) of the Act, not section 309 of the Act. However, the applicant was not prejudiced by this erroneous reference to the Act, as the director applied the correct legal standard.