



U.S. Citizenship  
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Services

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FILE:



Office: MIAMI, FL

Date:

DEC 06 2006

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 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, Chief  
Administrative Appeals Office

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

The applicant was born in Jamaica on April 9, 1969. The applicant's father, [REDACTED] was born in New York on April 17, 1944, and he is a U.S. citizen. The applicant's mother, [REDACTED] is a national of Jamaica. The record reflects that the applicant's parents were never married. 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 she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director determined that the applicant failed to satisfy section 309(a)(4) of the Act, as she failed to establish that prior to her eighteenth birthday, she was legitimated as the child of [REDACTED] that Mr. [REDACTED] acknowledged paternity of the applicant, or that paternity was established by adjudication of a competent court. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the application was not considered under the appropriate law. *Brief in Support of Appeal*, dated May 10, 2005. Specifically, counsel contends that the district director only assessed whether the applicant met the present section 309(a)(4) of the Act, when the applicant is also eligible for consideration under pre-amendment section 309(a)(4) of the Act. Counsel asserts that the applicant meets the requirements of pre-amendment section 309(a)(4) of the Act, as she was legitimated by order of a Canadian court prior to her 21<sup>st</sup> birthday. *Id.*

The record contains a brief from counsel; a copy of the applicant's birth certificate; the results of a DNA parentage test; an Order to Dispense with Consent Other Than the Consent of the Child to Be Adopted from the Ministry of Community and Social Services, Ontario, Canada, dated January 25, 1978; a copy of the applicant's father's birth certificate; copies of school and work records for the applicant's father; a copy of the applicant's father's U.S. passport, and; an adoption order for the applicant. The entire record was reviewed and considered in rendering this decision.

"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 1969; hence, § 301(a)(7) of the former Act applies to her application for a certificate of 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.

Prior to November 14, 1986, in order for an applicant born out of wedlock to establish that she is the child of a U.S. citizen father, section 309 of the former Act required that paternity be established by legitimation while

the applicant was under twenty-one. Subsequent amendments made to the Act in 1986 provide that a new section 309(a) applies to persons not yet 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 provide that the former section 309(a) applies to persons who attained the age of eighteen years as of November 14, 1986, as well as to individuals whose paternity was 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.* Applicants who on November 14, 1986 were between the ages of fifteen and eighteen are permitted to choose whether to have pre- or post-amended section 309(a) apply to them. *The Immigration Technical Corrections Act of 1988, section 9(r)(adding a new section 23(e) to the Immigration and Nationality Amendments of 1986); Act of November 14, 1986, amending section 309(a) of the Act.*

In the present matter, the applicant was age 17 on November 14, 1986, thus she may elect to apply either pre- or post-amended section 309(a) to the present matter.

Pre-amendment section 309(a) requires the applicant to establish that she was legitimated prior to her twenty-first birthday. Post-amendment section 309(a) requires the applicant to show that, while she was under age eighteen, (a) she was legitimated under the law of her residence or domicile, or; (b) her father acknowledges his paternity in writing under oath, or; (c) the paternity of the applicant is established by adjudication of a competent court. Section 309(a) of the Act.

As the applicant may choose the law most favorable to her application, the AAO will assess whether the applicant is eligible for a certificate a citizenship under both pre- and post-amendment section 309(a).

The applicant has not established that she qualifies for a certificate of citizenship under pre-amendment section 309(a) of the Act, as she has not established that she was legitimated by her father while she was under age 21. The record contains a DNA parentage test report that reflects a 99.9998% chance that the applicant is the child of her father, yet it was created on February 13, 2003, when the applicant was 33 years old.

The only other document in the record that references Mr. [REDACTED] the applicant's father consists of an Order to Dispense with Consent Other Than the Consent of the Child to Be Adopted ("order") from the Ministry of Community and Social Services, Ontario, Canada, dated January 25, 1978. However, the applicant has not provided sufficient documentation such that the AAO can determine whether this order constitutes an affirmative finding of paternity. For example, the record does not reflect whether evidence of paternity was considered by the Ministry of Community and Social Services, whether Mr. [REDACTED] was given an opportunity to confirm or deny such paternity, or whether the Ministry of Community and Social Services merely relied on the representations of the applicant's mother in issuing the order. Thus, the applicant has not established that the order serves as an adjudication of paternity, such that the order may serve as a basis, in part, for legitimation.

Further, Canadian legitimacy law provides that, in order for a child born out-of-wedlock to become legitimized, her parents must marry. *See Canadian Legitimacy Act, R.S.A. 2000, c. L-10.* As the applicant's natural parents were never married, she has not shown that she was legitimated under Canadian law.

Counsel contends that, contrary to the district director's decision, pre-amendment section 309(a) of the Act has been interpreted to permit legitimation to take place pursuant to the laws of the United States or the laws of the foreign residence or domicile of the father or child. However, as noted above, the applicant has not shown that she was legitimated in any jurisdiction while she was under age 21.

Based on the foregoing, the applicant has not established that she was legitimated by her father while she was under age 21. Thus, she has not shown that she meets the requirements of pre-amendment section 309(a) of the Act.

The applicant has not established that she qualifies for a certificate of citizenship under post-amendment section 309(a) of the Act. As discussed above, the applicant has not shown that she was legitimated while she was under age 18. The record contains no evidence that her father acknowledged his paternity in writing under oath at any time. Further, the applicant has not shown that a competent court established paternity by adjudication. As noted above, the order of the Ontario Ministry of Community and Social Services does not reflect that determining paternity to a reasonable degree of certainty was at issue, as the order served merely to eliminate the need for consent of Mr. [REDACTED] in connection with the adoption of the applicant.

Therefore, she has not shown that she qualifies for a certificate of citizenship based on the U.S. citizenship of [REDACTED] pursuant to section 301(a)(7) of the former Act.

The regulation at 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. Based on the foregoing, the applicant has failed to meet her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.