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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under §§ 309 and 301 of the former Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

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, California Service Center, 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 October 18, 1967. The applicant's father was born in the United States on January 12, 1921, and he was a U.S. citizen at the time of the applicant's birth. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to §§ 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The director concluded the applicant had failed to establish that her father legitimated her prior to her twenty-first birthday. The application was denied accordingly. On appeal, the applicant asserts that her parents did not understand the process necessary to obtain her U.S. citizenship. She adds that she entered the United States in 1992 rather than 2002, as stated in the director's letter. The AAO notes that this is a second application for a certificate of citizenship filed by this applicant, and the second application contains the same supportive documentation as the first application, with the addition of several new letters of recommendation. The record includes letters from the applicant's relatives stating their personal knowledge of the applicant's parentage; however, there is no evidence that the applicant was legitimated while she was under the age of twenty one.

"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 1967; therefore, § 301(a)(7) of the former Act 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.

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" prior to November 14, 1986, § 309 of the former Act required that paternity be established by legitimation while the child was under twenty-one. Subsequent 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 individuals who had attained eighteen years of age as of November 14, 1986 and those with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See § 13 of the INAA, supra. See also § 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.*

In the present matter, the applicant 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. Accordingly, the applicant must establish that she was legitimated by her father prior to her twenty-first birthday under the law of the applicant's residence or domicile (Jamaica) or under the law of her father's residence or domicile (Florida).

The Jamaican Status of Children Act of 1976 (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 record contains an amended birth certificate for the applicant that includes her father's name and information. The amendment to include her father's name, however, was not made until 1994, when the applicant was twenty seven years old. The record does not contain any other documentation reflecting acknowledgement or recognition of paternity prior to 1994. The applicant's father's provision of child support, as reflected in the letters from her relatives, does not establish paternity for the purposes of the JSCA.

Moreover, pursuant to Florida law, a child born out-of-wedlock may be legitimated by the parents' written, sworn acknowledgement of paternity. *Florida Statutes § 732-108 (1992).* The statements of relatives relating details of the applicant's relationship with her father do not constitute the type of written acknowledgement of paternity contemplated by Florida law. The evidence on the record does not establish that the applicant's father legitimated her prior to her twenty-first birthday.

Accordingly, the AAO finds that the applicant has failed to establish that she qualifies for a certificate of citizenship pursuant to § 309 of the former Act. It is therefore unnecessary to discuss the physical presence requirements set forth in § 301 of the former 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.