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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: EL PASO, TX

Date: NOV 21 2006

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Sections 309(a) and 301(g)
of the Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a)
and 1401(g)

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, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on January 31, 1972, in Germany. The individual identified as the applicant's natural [REDACTED] was born on October 23, [REDACTED] South Carolina. The applicant's mother, [REDACTED], is, based on the statements of the applicant, a German citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her natural father, [REDACTED]

Based on the evidence of record, the district director determined that the applicant had not been legitimated by [REDACTED] prior to her 21st birthday, as required by section 309(a) of the Act. Accordingly, he denied the application.

On appeal, counsel asserts that the denial of the instant application was based on a misapplication of all relevant statutory provisions and the findings in *Matter of Lauer*, 12 I&N Dec. 210 (BIA 1967), as well as a failure to consider the Congress' intent in formulating the language of section 309 of the Act.

As the applicant was born out of wedlock to parents who never married, the derivative citizenship provisions set forth in section 309 of the Act apply to this case. Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached twenty-one years of age. As of that date, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) amended section 309, applying the changed provisions to persons who were not yet 18 years of age on November 14, 1986. As the applicant in this case was only 14 years old on November 14, 1986, her application will be considered under section 309(a) of the Act, as established by the 1986 amendments.

Section 309(a) of the Act states:

(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.

Should the applicant establish her eligibility under section 309(a) of the Act, she must also prove that prior to her birth [REDACTED] 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 followed his 14th birthday, as required by section 301(g) of the Act. Honorable service in the U.S. military, employment with the U.S. Government or with certain international organizations by U.S. citizen parents may qualify as physical presence in the United States.

The applicant has submitted an April 16, 1998 certificate that establishes she was born in Gersfeld, Germany on January 31, 1972 to [REDACTED] of Fort Campbell, Kentucky and [REDACTED]. She has also provided evidence [REDACTED] on February 21, 1973, in a Municipal Court in Bad Neustadt, Germany, acknowledged his paternity and obligated himself to pay child support for her until she reached 18 years of age. The record additionally contains a certificate issued by the Greenville County Health Department, Greenville, South Carolina reflecting that [REDACTED] was born in that county on October 23, 1946; statements made by [REDACTED] in relation to his residence in Greenville, South Carolina and his blood relationship to the applicant; and [REDACTED] 1988 Certificate of Release or Discharge from Active Duty in the U.S. military. Based on the foregoing evidence, the AAO concludes that the applicant has met the requirements of section 309(a)(1), (2), (3) and (4)(B) of the Act. It also finds the evidence of record to establish that, prior to her birth, her father was physically present in the United States or its outlying possessions for a period or periods of at less than five years, two of which followed his 14th birthday.

The copy of [REDACTED] 1988 military discharge certificate that documents his honorable U.S. military service refers to previous active military service lasting 7 years, 11 months and 28 days. While no dates are given for that service, section 13 of the certificate, "Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized (All periods of service)," lists a series of medals awarded [REDACTED] for his service in the Vietnam War. The proof of [REDACTED] Vietnam-era service, the documentation of his birth in South Carolina and the German court records identifying him as a member of the U.S. military at the time of the applicant's birth, when combined, are sufficient to demonstrate five years of physical presence in the United States, at least two of which followed [REDACTED] 14th birthday. Accordingly, the appeal will be sustained.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met her burden in this proceeding.

ORDER: The appeal is sustained.