



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK

Date: SEP 20 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:

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 District Director, New York, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in St. Christopher, St. Kitts on March 12, 1970. The applicant's alleged father ("applicant's father"), [REDACTED] was born in St. Kitts on March 22, 1924, and he became a naturalized U.S. citizen on May 1, 1946, prior to the applicant's birth. The applicant's mother, [REDACTED], was born in St. Kitts on March 17, 1953, and she became a naturalized U.S. citizen on November 3, 2000, when the applicant was 30 years old. The applicant's parents married on October 1, 1981, when the applicant was eleven years old. 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 alleged U.S. citizen father.

The district director concluded the applicant failed to establish that [REDACTED] is in fact his natural father such that the applicant gained U.S. citizenship at birth. The application was denied accordingly.

On appeal, the applicant submits a copy of a birth record as evidence that [REDACTED] is his father.

The record contains a copy of the naturalization certificate of the applicant's father; copies of documentation relating to the applicant's father's military service; a copy of the marriage certificate of the applicant's mother and father; a notarized statement from the applicant's mother; a copy of the applicant's mother's naturalization certificate; a copy of the applicant's father's death certificate; a copy of the applicant's permanent resident card; a copy of the applicant's baptismal certificate, and; copies of three birth records 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 (9th Cir., 2000) (citations omitted). The applicant in the present matter was born in 1970; hence, § 301(a)(7) of the former Act applies to his 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.

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, section 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 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. Children 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 s 309(a) of the Act.

In the present matter, the applicant was age sixteen on November 14, 1986, thus he 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 he was legitimated by his father prior to his twenty-first birthday under the law of the applicant's father's domicile. Post-amendment section 309(a) requires the applicant to show that, while he was under age eighteen, (a) he was legitimated under the law of his residence or domicile, or; (b) his 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 his 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 he qualifies for a certificate of citizenship under pre-amendment section 309(a) of the Act. The record contains no documentation to reflect that the applicant's father has acknowledged his paternity of the applicant. In fact, the applicant's father filed a Form I-130 petition on behalf of the applicant on October 1, 1982 in which he claimed that the applicant is his step-son. The applicant's mother executed an affidavit on September 10, 1981 in which she stated that the applicant's father "has undertaken to assume responsibility as father and co-guardian [of the applicant] and to regularly maintain him financially and otherwise and to be responsible for his upkeep, care, education and welfare." *Statement from Applicant's Mother*, dated September 10, 1981. This statement does not state or imply that is the applicant's biological father. It is noted that the statement is not signed by the applicant's father, thus the record does not show that he acceded to the assertions therein.

The applicant has provided a total of three copies of birth records, each purporting to be a true copy of the entry in the Register Book of Births in the Parish of St. George, St. Christopher. The first and second records, dated October 6, 1981 and December 28, 1995, each list [REDACTED] as the applicant's mother, and they contain a line drawn through the box for the "Name and Surname of [the] Father." The third record, dated September 3, 2004, lists the applicant's mother as [REDACTED] and the applicant's father as [REDACTED]

[REDACTED]. The applicant has not explained why the third birth record differs from the first two. As the applicant's father died on May 28, 2004, the record does not reflect that he acceded to his inclusion on the third birth record which was generated after his death. Nor has the applicant established that the third record represents conclusive evidence that he was legitimated. Regardless, even if the third birth certificate was an acceptable record of legitimation, it was generated on September 3, 2004 when the applicant was 34 years old.

Thus, the record does not show that [REDACTED] is in fact the applicant's natural father, or that the applicant was legitimated prior to his twenty-first birthday under the law of the his father's domicile, as required by pre-amendment section 309(a).

The applicant has not established that he qualifies for a certificate of citizenship under post-amendment section 309(a) of the Act. As discussed above, the applicant has not established that he has been legitimated by [REDACTED] or any other individual. Section 309(a) of the Act. Nor has he established that [REDACTED] acknowledged paternity of the applicant in writing under oath. *Id.* Finally, the applicant has not submitted documentation to reflect that a competent court has adjudged that [REDACTED] is his natural father. *Id.*

Accordingly, the applicant has not shown that he qualifies for a certificate of citizenship based on the U.S. citizenship of [REDACTED].

It is noted that the applicant's mother is now a naturalized U.S. citizen. Pursuant to section 321 of the former Act, 8 U.S.C. § 1432,¹ individuals may acquire U.S. citizenship when one or both of their parents naturalize.

Section 322 of the former Act provides, in pertinent part:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and

¹ Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA amended and expanded the circumstances under which a child may acquire U.S. citizenship upon the naturalization of one or both of his parents, and benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was 30 years old on February 27, 2001, he does not meet the age requirement for consideration under the CCA.

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The applicant must meet all of the requirements of section 321 of the former Act simultaneously in order to qualify for a certificate of citizenship under this provision. It is noted that the applicant's mother became a naturalized U.S. citizen on November 3, 2000, when the applicant was age 30. Therefore, the applicant does not meet the age requirements section 322(a)(4) of the former Act, and he is not eligible for a certificate of citizenship based on his mother's naturalization.

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 his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.