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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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**JUN 01 2007**

FILE:

Office: CHICAGO, IL

Date:

IN RE:

Applicant:

[REDACTED]

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

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.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the district director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant was born in London, England, United Kingdom, on June 30, 1958. The applicant's father, [REDACTED] was born in the United States, and he is a U.S. citizen. The applicant's mother was born in England. She was not a U.S. citizen. The record reflects that the applicant's parents married after the applicant's birth. The applicant presently seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined that the applicant had established he was legitimated by his father, and that he therefore met the definition of a "child" for immigration purposes. The district director found, however, that the applicant failed to establish that his father was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after the age of fourteen, as required by the Act. The application was denied accordingly.

On appeal, the applicant submits additional evidence of his father's physical presence in the United States prior to the applicant's birth, and the applicant requests that his certificate of citizenship be approved.

"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." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (Citations omitted.) The applicant was born on June 30, 1958. Sections 309(a) and 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409(a) and 1401(a)(7), therefore apply to his acquisition of citizenship claim.

Section 309(a) of the former Act provided that the provisions of section 301 of the former Act applied to a child born out of wedlock if paternity was established by legitimation while the child was under the age of twenty-one.

Section 301(a)(7) of the former Act stated in pertinent part 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 . . . 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 . . . 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 requirement of this paragraph.

In order for sections 309(a) and 301(a)(7) of the former Act to be applicable in the present matter, however, the applicant must demonstrate that he meets the definition of "child" as set forth in section 101(c) of the former Act, 8 U.S.C. § 1101(c).

Section 101(c) of the former Act stated in pertinent part that:

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 [21 under § 309(a)] years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

The evidence in the record reflects that the applicant’s parents were not married at the time of the applicant’s birth. The applicant must therefore establish that he was legitimated by his father under the law of his, or his father’s residence or domicile, prior to the applicant’s twenty-first birthday.

The record reflects that the applicant resided in England until March 2, 1959, and that he subsequently resided in Illinois. The evidence indicates that Mr. [REDACTED] resided in Illinois. The common law of England does not recognize or allow for the legitimation of a child born out of wedlock. *See Robles v. Folsom*, 239 F.2d 562 (2<sup>nd</sup>. Cir. 1956); *See also, Matter of Green*, 11 I&N Dec. 546, 547 (BIA 1965) (Overruled on unrelated grounds.) The applicant has therefore not been legitimated under English law.

Section 40-303 of the Illinois Revised Statutes provides that a child is legitimated by the intermarriage of his or her parents. The applicant states in his Form N-600, Application for Citizenship that his parents married in Illinois on June 20, 1959. The record does not contain a marriage certificate for the applicant’s parents. The record does, however, contain the applicant’s amended birth certificate reflecting that Mr. [REDACTED] declared his paternity over the applicant in February 1964, and reflecting that the applicant and his mother changed their last name to [REDACTED]. The record additionally contains immigrant visa evidence reflecting that the applicant and his mother obtained family-based U.S. immigrant visas, and that they immigrated to the United States in March 1959, with the intent to reside with Mr. [REDACTED]. The record contains lawful permanent resident card evidence reflecting the applicant’s U.S. lawful permanent resident status, and reflecting the applicant’s last name as [REDACTED]. In addition, the record contains the applicant’s school transcript evidence reflecting that the applicant’s last name was [REDACTED] and that his parent or guardian was Mr. [REDACTED].

Upon review of the evidence in the record, the AAO finds that the applicant has established by a preponderance of the evidence that his parents married in 1959, and that he was thus legitimated by his father under Illinois law prior to his twenty-first birthday. The applicant additionally established that he was in his father’s legal custody at the time of legitimation. Accordingly, the applicant meets the definition of “child” as set forth in section 101(c) of the former Act. Moreover, the applicant has demonstrated that his father established paternity over him prior to his twenty-first birthday, as required by section 309(a) of the former Act.

The AAO finds that the applicant has also established by a preponderance of the evidence, that his father met section 301(a)(7) of the former Act, physical presence requirements prior to the applicant’s birth. The record contains a birth certificate reflecting that Mr. [REDACTED] was born in Illinois on April 5, 1937. Illinois school transcript evidence additionally establishes that Mr. [REDACTED] attended school in Illinois from September 1943 to June 1955, and U.S. military records contained in the record reflect that Mr. [REDACTED] served in the U.S. Armed Forces between January 1955 and January 1963.

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

**ORDER:** The appeal is sustained. The application is approved.