



U.S. Citizenship
and Immigration
Services

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FILE:

Office: BUFFALO, NEW YORK

Date: MAY 16 2007

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under Sections 309 and 301 of the
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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on June 14, 1984, in Niagara Falls, Ontario, Canada. The applicant's father, [REDACTED] was born in Niagara Falls, New York, on September 4, 1953. The applicant reports that his father died on October 4, 2006. The applicant's mother, [REDACTED] was born in Canada and is not a U.S. citizen. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Prior to November 14, 1986, section 309 of the former Immigration and Nationality Act (former Act) required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 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). In the present case, the applicant was two years old on November 14, 1986. His case will therefore be considered pursuant to the provisions of section 309(a) of the amended Act.

Section 309 of the amended Act states in pertinent part that:

(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.

The record reflects that the Family Court of the State of New York entered an Order of Filiation on May 23, 2006 declaring that [REDACTED] was the applicant's father. A DNA report issued on July 10, 2006 by [REDACTED] Laboratories Inc. indicates a 99.99% likelihood that [REDACTED] was the applicant's natural father. The record additionally contains a U.S. birth certificate reflecting that [REDACTED] was born a U.S. citizen in

Niagara Falls, New York, on September 4, 1953. A letter to [REDACTED] from Family and Children's Services of the Niagara Region as well as school records are also included in the record.

The AAO finds that the applicant cannot meet the requirements listed in section 309(a)(3) of the Act because his father did not agree in writing to provide financial support before he reached the age of 18. The letter to [REDACTED] from Family and Children's Services of the Niagara Region does not establish that his father had agreed in writing to provide him financial support. It is alleged that [REDACTED] is now deceased, but section 309(a)(3) of the Act exempts from the agreement to financially support requirement only a father who was deceased at the time when the requirement could otherwise be fulfilled (i.e. prior to the child's 18th birthday). The AAO must therefore conclude that the applicant fails to meet the requirement in section 309(a)(3) of the Act.

The AAO notes that the applicable law in Ontario, Canada, provides for the equal status of children whether born in or out of wedlock. *See* Children's Law Reform Act, R.S.O. 1990 (effective March 31, 1978).¹ Nevertheless, 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

Although the applicant may have been legitimated under Canadian law, such legitimation did not occur while he was in his father's legal custody. Additionally, the AAO notes that the Children's Law Reform Act provides for a process to establish parentage by applying for a court declaration recognizing paternity. *See Id.* at c. 12, Part II, § 4 -7. Paternity is presumed only where the father is or was married to (or was cohabitating with) the mother at the time of the child's birth, the father marries the mother after the child's birth and acknowledges the child, the father has certified the child's birth as the father under the law, or the father has been found or recognized by a court to be the father of the child. *Id.* at § 8. There is no indication in the record in this case that the applicant's father sought or obtained recognition of paternity in Canada. The AAO thus finds that the applicant does not meet the requirement listed in section 309(a)(4)(A) of the Act and is ineligible for citizenship.

¹ Legitimation in the State of New York is accomplished by marriage of the natural parents. *Matter of Levy*, 17 I&N Dec. 539 (BIA 1980). Alternatively, a father can file an acknowledgment of paternity instrument with the New York Department of Social Services, Putative Father Registry. *See* New York Estates, Powers and Trusts Law § 4-1.2. The applicant's parents were never married to each other. Additionally, there is no evidence in the record that Gilbert Hart legitimated the applicant or acknowledged him under oath or by adjudication of a competent court prior to his 18th birthday. It appears from the record, however, that the applicant's residence or domicile is, and has intermittently been, in Ontario, Canada. Thus, the AAO considers the law in Ontario, Canada to be applicable in the instant case.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.