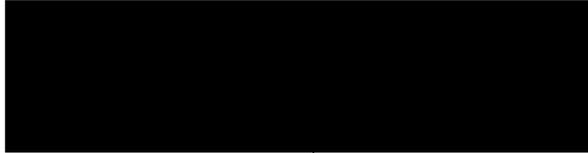


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: ATLANTA, GA

Date:

SEP 28 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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, Atlanta, Georgia, 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 [REDACTED] in Kingston, Jamaica. The applicant's mother, as reflected in the applicant's birth certificate, is [REDACTED]. The applicant's father's name is not listed on the birth certificate. The applicant's certificate of baptism indicates that the applicant, son of [REDACTED] and [REDACTED] was baptized on June 18, 1972 in Jamaica. The applicant was adopted by [REDACTED] on May 18, 1975, when the applicant was three years old. The applicant's adoptive father was born in the United States on April 20, 1941. The applicant was admitted to the United States as a lawful permanent resident in 1980, as the adopted child of a U.S. citizen. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the applicant's citizenship claim upon finding that the applicant was ineligible for benefits under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA) because he was over 18 on its effective date. The district director further found that the applicant did not acquire U.S. citizenship at birth under section 309 of the Act, 8 U.S.C. § 1409, because he was not the biological child of a U.S. citizen. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that the district director erred in not issuing a request for evidence before finding that he did not establish that he was the biological child of [REDACTED]. See Statement of the Applicant on Form I-290B, Notice of Appeal. The applicant further contends that the applicable citizenship law should be the law "at the time of eligibility" such that he should be able to benefit from the provisions of the Child Citizenship Act of 2000 (CCA). *Id.*

The AAO first notes that the CCA is not retroactive. The provisions of the Act amended by the CCA apply only to persons who were not yet 18 years old as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act.

"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 this case was born in 1972. 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 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 14 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 AAO notes that the applicant immigrated to the United States as the adopted child of [REDACTED]. The AAO further notes that the applicant's immigrant visa application and application for certificate of citizenship indicate that he is the adopted son of [REDACTED]. The record contains an adoption decree and registration reflecting that [REDACTED] is the applicant's adoptive father. The applicant has provided no evidence to suggest that there is a blood relationship between him and his adoptive father, as would be required by section 309(a)(1) of the Act, 8 U.S.C. § 1409(a)(1). The AAO must therefore find that the applicant did not acquire citizenship at birth pursuant to section 309 of the Act, 8 U.S.C. § 1409.¹

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 has failed to meet his burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ Having found that the applicant failed to establish that he is the biological child of Paul Aston Warner, the AAO need not address the remaining requirements of sections 301 or 309 of the Act, 8 U.S.C. §§ 1401 and 1409.