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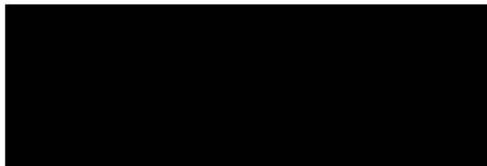
U.S. Department of Homeland Security
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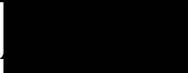
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI, FL

Date: **JUL 11 2008**

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under sections 301(g) and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 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.

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, Miami, Florida, 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 May 17, 1994 in the Bahamas. The applicant claims that his father is [REDACTED]. His birth certificate lists only his mother's name, [REDACTED]. The applicant's parents have never married each other. The applicant's father became a U.S. citizen upon his naturalization on April 16, 1970. The applicant presently seeks a certificate of citizenship pursuant to sections 301(g) and 309 of the Immigration and Nationality Act (the Act); 8 U.S.C. §§ 1401(g) and 1409, based on the claim that he is entitled to U.S. citizenship through his father.

The district director concluded the applicant had failed to demonstrate a biological relationship with [REDACTED] an agreement to financially support him, or the required physical presence in the United States. The application was denied accordingly.

On appeal, the applicant's father re-submits his naturalization certificate and the applicant's birth certificate, and includes additional bank statements. He further states that he is "able and willing to support [the applicant] financially." See Statement on Form I-290B, Notice of Appeal to AAO.

In order to establish that he derived U.S. citizenship at birth, the applicant must establish that his father satisfies the requirements set forth in section 301(g) of the Act, 8 U.S.C. § 1401(g). Because the applicant's parents were not married at the time of the applicant's birth, he must also establish that he meets the requirements set forth in section 309 of the Act, 8 U.S.C. § 1409.

Section 301(g) of the Act, 8 U.S.C. § 1401(g), states in pertinent part, that the following shall be a national and citizen of the United States at birth:

(g) 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 five years, at least two 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 order to satisfy the physical-presence requirement of this paragraph.

Section 309 of the Act, 8 U.S.C. § 1409, 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 contains the applicant's birth certificate, listing only his mother. The record also contains an affidavit executed by [REDACTED], acknowledging paternity under oath. The Form I-290B, Notice of Appeal to the AAO, includes a written agreement to provide financial support to the applicant. [REDACTED] became a U.S. citizen in 1970. The applicant was born on May 17, 1994.

The AAO finds that the applicant has fulfilled the requirements set forth in 309(a) of the Act, 8 U.S.C. § 1409(a).

The question remains whether the applicant has established that his father was physically present in the United States prior to the applicant's birth for five years, two of which while over the age of 14. The applicant must therefore demonstrate that his father was physically present in the United States for five years prior to 1994, two of which while over the age of 14 (after 1951). The bank statements in the record do not indicate that the applicant's father was present in the United States prior to 1994. The applicant's father's naturalization certificate suggests he may have been physically present in the United States, but the length of time is unknown. The applicant has therefore failed to establish that he qualifies for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g).

Section 320 of the Act, 8 U.S.C. § 1431, applies to a child born outside of the United States, but residing in the United States as a lawful permanent resident in the legal and physical custody of a U.S. citizen parent. The record reflects that the applicant has not been admitted into the U.S. pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that he meets the requirements for citizenship as set forth in section 320 of the Act, 8 U.S.C. § 1431.

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.