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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: [Redacted]

Office: NEW YORK, NY

Date: JUN 13 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under sections 309 and 301 of the former 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, New York, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in St. Vincent and the Grenadines on May 18, 1966. Her father, [REDACTED], became a U.S. citizen upon his naturalization on September 2, 1931. He passed away in 1976. The applicant's mother is not a U.S. citizen. The record reflects that 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 former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director concluded the applicant had failed to establish that she had been legitimated by her father prior to attaining the age of 21. The application was denied accordingly.

On appeal, the applicant contends that she "was legitimated prior to age 21." See Statement of Applicant on Form I-290B, Notice of Appeal to the AAO.

"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 1966. Section 301(a)(7) of the former Act, the predecessor to current section 301(g), therefore applies to the present case.

Section 301(a)(7) of the former Act states that the following shall be a national and citizen 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 21. Subsequent amendments made to the Act in 1986, provided that a new section 309(a) would apply to persons who had not attained eighteen years of age as of November 14, 1986, the date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided that former section 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been 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.*

In the present matter, the applicant was born prior to November 14, 1986, and she was over the age of eighteen on November 14, 1986. The AAO will therefore assess the applicant’s claim pursuant to section 309(a) requirements under the former Act. Accordingly, the applicant must establish that she was legitimated by her father prior to her 21st birthday.

The AAO finds that the applicant has failed to establish that she was legitimated prior to her 21st birthday. Marriage of the natural parents is the means of legitimation in St. Vincent and the Grenadines, and in New York where the applicant currently resides. The applicant’s parents were never married, therefore she was not legitimated.

The record contains a birth certificate, issued in 2003, listing [REDACTED] as her father. The record also contains a birth certificate, issued in 1996, not listing anyone as the applicant’s father. The AAO notes that the applicant’s father passed away in 1976. Even if the listing of the father’s name in the birth certificate could amount to legitimation, the AAO finds that the applicant was not in her father’s legal custody in 2003 and therefore she fails to meet the definition of “child” in section 101(c) of the Act.

Accordingly, the applicant is ineligible to derive citizenship under section 309 of the former Act.

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. The applicant has failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.