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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAR 10 2008

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (N-600 Application) was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant was born on June 30, 1989, in England. The record reflects that the applicant's mother is not a U.S. citizen. The applicant claims that his father is a native born U.S. citizen. The applicant's parents did not marry, and the applicant's birth certificate contains no paternal information. The applicant presently seeks a certificate of citizenship under 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 director found the applicant had failed to provide evidence to establish that is his biological father. The director found further that the applicant failed to establish that was physically present in the United States for a period of five years prior to the applicant's birth, at least two years of which occurred after turned fourteen, as required by section 301(g) of the Act, 8 U.S.C. § 1401(g). The N-600 application was denied accordingly.

On appeal, the applicant asserts that attached DNA parentage information establishes that is his biological father.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute in effect at the time of the child's birth. *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000.) The applicant was born out of wedlock in England on June 30, 1989. Section 309 of the Act is therefore applicable to his citizenship claim.

Section 309 of the Act, provides in pertinent part that:

(a) The provisions of paragraphs . . . (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.

(Emphasis added.) The applicant was born in 1989. The version of section 301 of the Act that was in effect at that time (section 301(g) of the Act) therefore applies if he establishes eligibility for under section 309 of the Act.

Section 301(g) of the Act, 8 U.S.C. § 1401, provides in pertinent part, that the following shall be nationals and citizens 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 . . . .

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

The AAO notes that in order to meet the requirements of section 309 of the Act, the applicant must satisfy all of the requirements contained in section 309(a)(1), (2) and (3). The applicant must then establish that at least one of the three requirements contained in section 309(a)(4) of the Act has been met.

The record contains the following evidence relating to [REDACTED] U.S. citizenship status and his paternity over the applicant:

A State of Florida, Certificate of Live Birth reflecting that [REDACTED] was born in Fort Myers, Florida on April 17, 1969. The Certificate of Birth reflects that on July 1, 1977, [REDACTED] s name was legally changed to [REDACTED]

A January 9, 2007 Parentage/Kinship Test Report from Genelex Corporation, accredited by the American Association of Blood Banks Parentage Testing Committee for DNA parentage testing. The DNA results reflect a 99.9999% probability that [REDACTED] is the applicant's biological father.

The AAO finds, upon review of the above evidence, that the applicant has established by a preponderance of the evidence that [REDACTED] is a native-born U.S. citizen. The AAO finds further that the applicant has established by clear and convincing evidence that [REDACTED] is his biological father. The applicant therefore satisfied the requirements set forth in section 309(a)(1) and (2) of the Act.

The record additionally contains a written statement signed under oath by [REDACTED] acknowledging on August 23, 2006, (when the applicant was seventeen years old) that he is the biological father of the applicant. The applicant therefore also satisfied the requirements set forth in section 309(a)(4)(B) of the Act.

The AAO notes, however, that the record contains no evidence of a written agreement by [REDACTED] to provide financial support for the applicant until he reaches the age of eighteen. The applicant therefore failed to satisfy the requirement set forth in section 309(a)(3) of the Act. Because the applicant failed to satisfy all

of the necessary requirements contained in section 309 of the Act, he is not eligible for consideration under section 301(g) of the Act.<sup>1</sup>

The burden of proof is on the claimant to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The applicant failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the N-600 application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.

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<sup>1</sup> The AAO notes that the record also contains no documentary evidence to demonstrate that [REDACTED] was physically present in the United States for at least five years prior to the applicant's birth on June 30, 1989, as required by section 301(g) of the Act.