



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: BOISE, IDAHO Date:

SEP 09 2008

IN RE: Applicant: [REDACTED]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Boise, Idaho, 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 December 11, 1980 in Bury, England. The applicant's father, [REDACTED] was born in the United States on June 1, 1959. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were never married to each other. The applicant was adopted by [REDACTED] in 1984. She was recognized by her natural father, [REDACTED] in April 2006. 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 she acquired U.S. citizenship at birth through her father.

The field office director denied the application finding that the applicant had failed to establish that she was legitimated prior to her 18<sup>th</sup> birthday. On appeal, the applicant maintains that her father was prevented from contacting her by the applicant's mother.

“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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in the present matter was born in 1980. Section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect prior to the amendments enacted by the Act of November 16, 1986, Pub. L. 99-653, 100 Stat. 3655, is therefore applicable in this case.

Section 301(g) of the Act then provided that 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.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her 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).<sup>1</sup> In the present case,

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<sup>1</sup> The amendments further provided 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. Because the applicant's paternity was not established by legitimation prior to November 14, 1986, former section 309(a) does not apply to her case.

the applicant was five years old on November 14, 1986. The amended section 309(a) therefore applies to the applicant's case.

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 applicant admits that she had not contact with her father for 24 years, and the record indicates that the applicant's father made a "statutory declaration" in 2006. The Legitimation Act of 1926 states that legitimation can be accomplished in England through marriage of the parents. The applicant's parents were never married to each other. The AAO thus finds that the applicant was not legitimated, and therefore did not acquire U.S. citizenship at birth through her natural father. The applicant's paternity was not acknowledged under oath while she was under the age of 18, nor was her paternity established by adjudication of a competent court. In addition, her father did not agree in writing to provide financial support for her until she reached the age of 18. The AAO finds therefore that the applicant did not acquire U.S. citizenship at birth.

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 her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.