U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: HOUSTON (AUSTIN), TX Date: AUG 25 2004

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Interim District Director, Houston (Austin), Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on November 17, 1972, in Germany. The applicant's natural father, was born on January 24, 1929, in Austin, Texas, and he is a United States (U.S.) citizen. The applicant's mother was born in Germany and she is not a U.S. citizen. The applicant's parents did not marry. The applicant presently 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 he acquired U.S. citizenship at birth through his natural father.

The interim district director (IDD) found that the sole issue in the applicant's case was whether he met the written financial support provisions set forth in section 309(a)(3) of the Act. The IDD noted that the record contained a September 9, 1976, German Court decree ordering to pay monthly child support payments to the applicant until he reached the age of eighteen. However, the IDD found that the applicant had failed to establish that his father actually made child support payments to the applicant until he reached the age of eighteen. The IDD concluded that the evidence in the record contained no specific written agreement stating that Mr. Edwards would financially support the applicant until his eighteenth birthday. The IDD therefore found that the applicant had failed to satisfy the citizenship provisions set forth in section 309(a)(3) of the Act, and the application was denied accordingly.

On appeal, the applicant asserts that court documents and affidavit evidence contained in the record establish that is his natural father, that was ordered to pay child support on his behalf, and that paid child support from 1976 to 1980. The applicant then requests additional time to file his appeal with the AAO, stating that his immigration-related detention made it difficult to appeal his case and to find and obtain an attorney to help him with his appeal.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part, that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed." The IDD's decision to the applicant and the Form I-290B, Notice of Appeal to the Administrative Appeals Office (Form I-290B) state that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision (33 days if the decision is mailed). The Form I-290B states further that, "if an applicant needs more than 30 days to file an appeal, the applicant must explain why in a separate letter attached to the Form I-290B. The AAO will grant more time only for good cause.

The IDD's decision denying the present application is dated May 8, 2003. The record reflects that the applicant appeal was filed on June 11, 2003, thirty-four days after the date contained on the IDD's decision. The AAO notes, however, that in addition to the detention-related problems the applicant had in filing his appeal, a May 14, 2003, letter addressed to an immigration officer reflects that the applicant requested a second copy of his May 8, 2003, IDD decision, and indicates that, as of May 14, 2003, the applicant had difficulty obtaining the IDD decision from the detention center booking area. The AAO finds that under the present circumstances, the applicant's request for an additional four days to file his appeal is reasonable. The AAO therefore grants the applicant's request.

Because the applicant was born out of wedlock, derivative citizenship provisions set forth in section 309 of the Act apply to his 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 twenty-one. Amendments made to the Act in 1986, provided that a new section 309(a) applied 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 thirteen-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 record reflects that a German Court determined the paternity of [redacted] over the applicant on September 9, 1976, pursuant to DNA evidence indicating a 99.997 % plausibility rate that [redacted] is the applicant's natural father. The record additionally contains a U.S. birth certificate reflecting that [redacted] was born a U.S. citizen in [redacted] on January 24, 1929. Based on the foregoing evidence, the AAO finds that the applicant has established he meets the requirements of section 309(a)(1), (2), and (4)(C) of the Act. The AAO additionally finds that the applicant meets the requirements set forth in clause (3) of section 309(a) of the Act.

The AAO notes that the provisions set forth in section 309(a)(3) of the Act do not contain a requirement that an applicant must establish his or her natural father made monetary payments, for any period of time, towards financially supporting the child. The AAO therefore does not require that the applicant establish [redacted] actually paid financial support to the applicant at any time.

The AAO notes further that courts have found that affidavits of financial support, such as the one referred to in section 309(a)(3) of the Act, do not, in and of themselves, constitute legally

enforceable contracts. *See Stein v. Stein,* 831 S.W. 2d 684 (Mo. Ct. App. 1992). On the other hand, the AAO notes that the German Court Order contained in the record reflects that was ordered to pay the applicant (represented by the Youth Welfare Office) monthly child support payments from the date of the applicant's birth until the date on which the applicant turned eighteen. The court order is clearly a legally enforceable document in Germany. Moreover, the AAO notes that under the U.S. Uniform Enforcement of Foreign Judgments Act, foreign child-support judgments and accompanying writs of garnishment are recognized and enforced under most U.S. state laws. *See Walsh v. Wal-Mart Stores, Inc.,* 836 F.2d 1152, 1153 (8th Cir. 1988); *see also Redondo Construction Corporation v. I.R.S.,* 157 F.3d 1060, 1061 (6th Cir. 1998). The AAO notes further that did not appeal the child support order made against him. To the contrary, the record indicates that complied with the court order by paying child support payments to the applicant for four years, until moved to the United States. Based on the above evidence, the AAO finds that the legally enforceable court ordered child support evidence contained in the record constitutes a written document in which agreed to financially support the applicant until he reached the age of eighteen. Accordingly, the AAO finds that the applicant has met the requirements set forth in section 309(a)(3) of the Act.

The AAO also finds that the applicant has satisfied the requirements set forth in section 301of the former Act, as required by section 309(a) of the Act.

The AAO notes that "[t]he 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 was born on November 17, 1972. Section 301(a)(7) of the former Act is therefore applicable to his derivative citizenship claim.[1]

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part that:

> The following shall be nationals and citizens 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 requirement of this paragraph.

The applicant in the present case must establish that his natural father was either physically present in the U.S or its outlying possessions, or that he served honorably in the U.S. Armed Forces, for 10 years between January 24, 1929 and November 17, 1972, at least five years of which occurred after January 24, 1943. The record contains birth certificate evidence reflecting that Mr. Edwards was born in the United States on January 24, 1929. The record additionally

[1] The AAO notes that section 301(a)(7) of the former Act was superceded by section 301(g) of the amended Act on November 14, 1986.

contains U.S. Army retirement record evidence reflecting that retired from the U.S. Army on February 1, 1973, after a total of twenty-three years of active service with the army.

The AAO finds that the evidence presented establishes that meets the physical presence requirements set forth in section 301(a)(7) of the Act. The AAO therefore finds that the applicant has demonstrated by a preponderance of the evidence that he is a U.S. citizen under sections 309 of the Act and 301 of the former Act. The appeal will be sustained accordingly.

ORDER: The appeal is sustained.

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