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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

F,

Date: **JAN 05 2012**

Office: JACKSONVILLE, FL

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Sections 301(a)(7) and 309(a) of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(a)(7) and 1409(a) (1965)

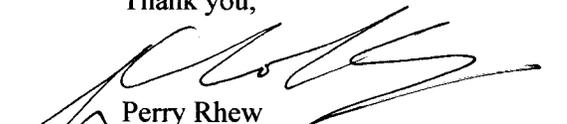
ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Jacksonville, 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 out-of-wedlock in Trinidad and Tobago, on [REDACTED]. The applicant's father is a U.S. citizen by birth in Jacksonville, Florida on June 17, 1933. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1965), based on the claim that he acquired U.S. citizenship at birth through his father.

The field office director determined that that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that his father met the physical presence requirements under former section 301(a)(7) of the Act. *See Decision of the Field Office Director*, dated June 20, 2011. The application was denied accordingly. On appeal, counsel contends that the field office director erred in finding that the applicant had failed to establish that his father met the physical presence requirements and submits additional evidence to establish the applicant's father's presence in the United States. *See Form I-290B and Counsel's Brief*.

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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1965. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.¹

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . 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.

Additionally, because the applicant was born out of wedlock, he must satisfy the provisions set forth in former section 309(a) of the Act.² Former section 309(a) of the Act provided, in pertinent part:

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

² Former section 309(a) of the Act applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

The provisions of paragraphs (3), (4), (5), and (7) of section 301(a) . . . of this title shall apply as of the date of birth to a child out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Therefore, the applicant must establish that his father was physically present in the United States for no less than ten years before his birth on September 7, 1965, and that at least five of these years were after his father's fourteenth birthday on June 17, 1947. Additionally, the applicant must establish that his paternity was established by legitimation before his twenty-first birthday on September 7, 1986.

The record reflects that the applicant was born out-of-wedlock in Trinidad and Tobago and that his parents never married. Pursuant to Under the Republic of Trinidad and Tobago Status of Children Act of 1981, enacted on March 1, 1983, all children born in and out of wedlock after the March 1, 1983 effective date of the Act have equal status if paternity is established, the person is under 21 years of age and the legitimation took place before the child reached the age of 18. *Matter of Patrick* 19 I&N Dec. 726 (BIA 1988). Under Chapter 46:07 of the Status of Children Act of 1981, in order for paternity to be recognized, the paternity has to be registered in a register of Births pursuant to the Births and Deaths Registration Act through: (1) a voluntary acknowledgement by the father which complies with legal requirements; or (2) an order of paternity.

The record contains three Certificates of Birth for the applicant. The first Certificate of Birth indicates that the applicant was born to [REDACTED] and an unknown father in Trinidad and Tobago on September 7, 1965. See *Certificate of Birth* [REDACTED] issued on June 25, 2001. The second Certificate of Birth indicates that the applicant was born to [REDACTED] in Trinidad and Tobago on September 7, 1965. See *Certificate of Birth* [REDACTED] issued on August 21, 2001. The third Certificate of Birth indicates that the applicant was born to [REDACTED] in Trinidad and Tobago on September 7, 1965. See *Certificate of Birth* [REDACTED] issued on October 23, 2009. The record does not contain a certified entry of the applicant's father's voluntary acknowledgement or a paternity order through which the applicant's father's name was added to the applicant's birth record; however, under Trinidad and Tobago laws paternity is not recognized until the father's name appears on the birth record. The certificates of birth in the record clearly establish that the applicant's father's name was only added to the birth record between June 25, 2001 and August 21, 2001. As such, the applicant's legitimation and paternity was not established in Trinidad and Tobago until the applicant was well over the age of twenty-one years.

Alternatively, an applicant's father could legitimate an applicant under the laws of the father's domicile. The record reflects that the applicant's father was domiciled in Florida. Florida law provides that there are five ways to establish the paternity of a child: (1) the parents are married to each other at the time of birth; (2) an unmarried couple signs a legal document (Form DH-511 or Form DH-432) at the time of birth or later; (3) paternity is ordered after DNA testing; (4) a judge orders paternity in court; or (5) the parents are married subsequent to the birth and thereafter alter the birth record. Fla. Stat. §§ 382, 409, 742 (2006). The record does not contain evidence that the applicant's parents were married, that the applicant's paternity was ordered by a court or that the

applicant's father acknowledged the applicant as his son under the parameters set by Florida law. As such, the applicant's father did not legitimate the applicant under Florida law.

Former section 309(a) of the Act explicitly requires that paternity of a child must be "established while such child is under the age of twenty-one years by legitimation," and the applicant's paternity was not established by legitimation before he turned 21.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in former section 309(a) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.