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

ER

FILE:

Office: VERMONT SERVICE CENTER

Date: JUN 07 2007

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under sections 301(g) and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 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 application was denied by the Acting Center Director, Vermont Service Center, 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 June 16, 2002 in Japan. The applicant claims that her father is [REDACTED] was born in the United States on November 20, 1979. The applicant's mother, [REDACTED], is not a U.S. citizen. [REDACTED] and [REDACTED] were married on March 13, 2003. [REDACTED] claims, in the Form N-600, Application for Certificate of Citizenship, that he served in the U.S. Armed Forces from December 7, 1998 to the present. The applicant presently seeks a certificate of citizenship pursuant to sections 301(g) and 309 of the Immigration and Nationality Act (the Act); 8 U.S.C. §§ 1401(g) and 1409, based on the claim that she is entitled to U.S. citizenship through her father.

The acting center director concluded the applicant had failed to establish that [REDACTED] was her natural father, that he had legitimated or acknowledged her, or that he had the required physical presence in the United States. The application was denied accordingly.

On appeal, the applicant's father submitted an affidavit stating that he is the applicant's natural father and acknowledging paternity. He states that a DNA test had been conducted and would be couriered to USCIS at a later date. He further asserts that he is currently a Petty Officer, First Class, in the U.S. Navy stationed in Ft. Meade, Maryland. He claims to have been stationed at the Naval Ice Center in Suitland, Maryland for three years prior to December 2005, and at the U.S. Post in Yongsan, Korea for one year prior to that. A copy of three performance evaluations, dated June 2002, March 2005, and September 2005 are also attached to the appeal.

In order to establish that she derived U.S. citizenship at birth, the applicant must establish that her father satisfies the requirements set forth in section 301(g) of the Act, 8 U.S.C. § 1401(g). Because the applicant's parents were not married at the time of the applicant's birth, she must also establish that she meets the requirements set forth in section 309 of the Act, 8 U.S.C. § 1409.

Section 301(g) of the Act, 8 U.S.C. § 1401(g), states 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States . . . by such citizen parent . . . may be included in order to satisfy the physical-presence requirement of this paragraph.

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 record contains two birth certificates for the applicant, both issued by the Japanese Embassy in Washington, D.C. The birth certificate issued in 2003 does not list her father's name. The birth certificate issued in 2005 lists [REDACTED] as the father. Both certificates state that they are based on a certified copy of the Official Family Register, issued by the Mayor of Yurihonjo City, [REDACTED] Japan on January 7, 2003 and May 26, 2005, respectively. The certified copies of the Official Family Registers are not in the record. To date, this office has not received the DNA evidence establishing the applicant's blood relationship with [REDACTED]. The AAO therefore finds that the applicant has failed to meet her burden of proof, by clear and convincing evidence, that she is the natural child of [REDACTED]. The AAO concludes that the applicant has failed to meet the requirement set forth in 309(a)(1) of the Act, 8 U.S.C. § 1409(a)(1).

The record contains [REDACTED] birth certificate establishing his birth in the United States. The record also contains a marriage certificate establishing that [REDACTED] married the applicant's mother, [REDACTED] on March 13, 2003.

The record contains no evidence regarding an agreement to provide financial support as required by 309(a)(3) of the Act, 8 U.S.C. § 1409(a)(3).

The AAO notes that the affidavit submitted by the applicant's father on appeal serves to acknowledge paternity in writing under oath, as required by section 309(a)(4)(B) of the Act, 8 U.S.C. § 1409(a)(4)(B). The AAO further notes that the applicant's parents' marriage, subsequent to her birth, serves to legitimate the applicant under Maryland law. *See Matter of Chambers*, 17 I&N Dec. 117 (BIA 1979) and 7 FAM 1133.4-2, Appendix A (citing to Estates & Trusts Code of Maryland § 1-206. Thus, the AAO finds that the applicant has met the requirements of section 309(a)(4) of the Act, 8 U.S.C. § 1409(a)(4).

Even if a blood relationship had been established, and all the requirements of section 309(a) of the Act, 8 U.S.C. § 1409(a) had been met, the applicant has failed to establish that [REDACTED] was physically present in the United States for five years prior to her date of birth, two of which while over the age of 14.

In *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(g) of the Act, 8 U.S.C. § 1401(g), the applicant must establish that her father was physically present in the U.S. for five years between November 20, 1979 and June 16, 2002, and that two of the years occurred after November 20, 1993, when the

applicant's father turned 14. Periods of service in the U.S. Armed Forces count toward the physical-presence requirement.

The record contains evidence of [REDACTED]'s service in the U.S. Armed Forces. Nevertheless, the evidence submitted does not establish, by a preponderance of the evidence, that his service was during the required period before the applicant's birth in June 2002. Other than the applicant's father's own affidavit, submitted on appeal, there is no evidence of physical presence during the relevant period. At best, the affidavit and the earliest performance evaluation, establish physical presence starting in June 2002.¹ The applicant must establish physical presence for five years prior to June 2002 (two of which were after November 20, 1993). The applicant has therefore failed to establish that she qualifies for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g).

Section 320 of the Act, 8 U.S.C. § 1431, applies to a child born outside of the United States, but residing in the United States as a lawful permanent resident in the legal and physical custody of a U.S. citizen parent. The record reflects that the applicant has not been admitted into the U.S. pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that she meets the requirements for automatic citizenship as set forth in section 320 of the Act, 8 U.S.C. § 1431.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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.

¹ In the Form N-600, Application for Certificate of Citizenship, the applicant claims that [REDACTED] has served in the U.S. Armed Forces since December 1998. The AAO notes that there is no documentary evidence to support that claim. The AAO further notes that, even if true, service in the U.S. Armed Forces since December 1998 would only establish 4 ½ of physical presence prior to the applicant's birth in June 2002.