



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

ER

FILE:

Office: MIAMI (TAMPA) FLORIDA Date: JUN 08 2007

IN RE:

Applicant:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, 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 on May 4, 1964, in Germany. The applicant was born out of wedlock to [REDACTED], a German citizen. The applicant's father, [REDACTED] was born on December 4, 1941 in Providence, Rhode Island. He served in the U.S. Armed Forces from 1960 to 1963. 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 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 in this case was born in Germany in 1964.

Section 309(b) of the Act, 8 U.S.C. § 1409(b), provides that

The provisions of section 301(g) shall apply to a child born out of wedlock on or after December 24, 1952, and before November 14, 1986, as of the date of birth, if the child is legitimated before age 21 or prior to November 14, 1986 (whichever is earlier) under the laws of the father or child's domicile, the child is unmarried, and the father has the required physical presence prior to the child's birth.

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: . . . 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 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.

The record reflects that the applicant's father, [REDACTED] was born in the United States in 1941. DNA evidence submitted with the appeal confirms that [REDACTED] is the applicant's father. In an affidavit submitted with the appeal, [REDACTED] states that he has continuously resided in the United States, except for the period of time he spent in Germany while serving in the U.S. Armed Forces. The record contains a Form DD-214 issued by the U.S. Armed Forces establishing his military service and honorable discharge. The record contains two birth certificates for the applicant, only the most recent one (issued in 2007) bears [REDACTED]'s name as the father. The record also contains a legal document whereby the applicant's mother raises a claim of paternity against [REDACTED]

¹ The translator includes a note in this document explaining that the name [REDACTED] may refer to [REDACTED]'s part-time occupation, and not be part of his name.

Legitimation in Germany requires either marriage of the natural parents or a court or state order declaring the child legitimate and issued upon an application by the natural father. *Matter of Lauer*, 12 I&N Dec. 222 (BIA 1967). Legitimation in the states of Florida and Rhode Island also require marriage of the natural parents. *See* 7 FAM 1133.4-2, Appendix A. There is no evidence in the record that the applicant was legitimated in accordance with the laws of her or her father's domicile, as required by section 309(b) of the Act. The applicant is therefore not eligible to derive citizenship through her father. Given the applicant's ineligibility on other grounds, the AAO does not address the issue of physical presence.

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.