

Identifying data deleted to  
prevent unauthorized  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

E 2

FILE:

Office: GREER, SC

Date:

DEC 03 2008

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Sections 309(a) and 301(g) of the  
Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a) and 1401(g)

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Greer, South Carolina 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 May 2, 1990 in Germany. The applicant's natural father, [REDACTED] was born a U.S. citizen. The applicant's mother, [REDACTED] was a citizen of Germany at the time of his birth and the record does not indicate that her nationality has changed. The applicant's parents never married. The applicant seeks a certificate of citizenship pursuant to section 309(a), as amended, 8 U.S.C. §§ 1409, based on the claim that he acquired U.S. citizenship at birth through his natural father.

Based on the evidence of record, the field office director determined that the applicant had not complied with the requirements for a certificate of citizenship under section 309(a) of the Act. She specifically noted that the record did not contain evidence that the applicant's father had agreed in writing to support him financially until the date of his 18<sup>th</sup> birthday, or that the applicant's father had legitimated him or established paternity through a written acknowledgement. Accordingly, she denied the application. *Decision of the Field Office Director*, dated June 3, 2008.

On appeal [REDACTED] asserts that the evidence submitted for the record satisfies the requirements of section 309(a) of the Act.

The AAO notes that the field office director also considered the applicant's claim to citizenship under section 320 of the Act, which requires the applicant to be residing in the United States as a lawful permanent resident. However, the record establishes that the applicant was admitted to the United States as a nonimmigrant visitor under the Visa Waiver Program in 1993 and is not a lawful permanent resident. Accordingly, the applicant does not hold the immigration status necessary to apply for a certificate of citizenship under section 320 of the Act and the AAO will limit its consideration of the applicant's claim to citizenship to the requirements found in section 309(a) of the Act.

Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached twenty-one years of age. As of that date, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) amended section 309, applying the changed provisions to persons who were not yet 18 years of age on November 14, 1986. As the applicant in this case was not born until 1990, his application will be considered under section 309(a) of the Act, as established by the 1986 amendments.

Section 309(a) of the Act states:

(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.

If the applicant establishes his eligibility under section 309(a) of the Act, he must also prove that prior to his birth, [REDACTED] met the physical presence requirements of section 301(g) of the Act. Honorable service in the U.S. military, employment with the U.S. Government or with certain international organizations by U.S. citizen parents may qualify as physical presence in the United States.

The record on appeal establishes the blood relationship of the applicant to [REDACTED] and that Mr. [REDACTED] was a United States citizen at the time of the applicant's birth, the requirements of subsections 309(a)(1) and (2) of the Act. The AAO also finds the evidence of record to offer sufficient proof that [REDACTED] agreed in writing to provide financially for the applicant until his 18<sup>th</sup> birthday, as required by section 309(a)(3) of the Act.

[REDACTED] in an undated letter written by his spouse, states that the applicant was residing with him prior to his military deployment and that he was paying all of his expenses. [REDACTED] also asserts that since his deployment he has been providing the applicant financial support while the applicant is living in Ohio. In a separate letter, also undated, [REDACTED] asserts that he assumed full financial responsibility for the applicant in 2006, the year in which he was contacted by the applicant who had been living in Ohio with his natural mother since 1993. [REDACTED] states that the applicant lived with him and his wife from January 2007 until January 2008 when [REDACTED] was deployed to South Korea and the applicant returned to Ohio.

The record contains a copy of a health insurance card in the applicant's name, effective September 1, 2007, submitted to establish the applicant's additional insurance coverage through [REDACTED] wife. Also included is a copy of an Account Summary for a savings account opened on March 9, 2007 in the applicant's name and cosigned by [REDACTED]'s wife. An approved application for a Uniformed Services Identification Card, DEERS Enrollment, for the applicant and signed by Mr. [REDACTED] has also been submitted. The attachment to the application indicates that, as [REDACTED] son, the applicant, was authorized base commissary, exchange and recreational privileges, and was established as a military dependent for health care purposes as of the date of his birth.

While [REDACTED] statements regarding his financial support of the applicant and the documentation of the applicant's supplemental insurance and the opening of a savings account in his name do not satisfy the requirements of subsection 309(a)(3) of the Act, the AAO will accept the approved application for DEERS enrollment, submitted January 3, 2008, as proof that Mr. [REDACTED] agreed in writing to provide financially for the applicant prior to his 18<sup>th</sup> birthday. In reaching this conclusion, the AAO acknowledges [REDACTED] statements regarding his loss of contact with the applicant from shortly after his birth until 2006, when the applicant reappeared in his life.

The field office director also found that the record did not establish that the applicant had been legitimated by [REDACTED] prior to his 18<sup>th</sup> birthday, nor did it include a sworn written acknowledgement of paternity by [REDACTED]. On appeal, [REDACTED] states that since 2006, when the applicant contacted him, he has had the applicant reside with him, has enrolled him in school and provided him with food, shelter and medical attention. He contends that this history should serve to legitimize the applicant's residence.

The AAO notes, however, that the legitimation requirement of section 309(a)(4) of the Act refers to the legitimation of the applicant's out of wedlock birth, not his U.S. residence. While the DNA testing conducted by Genetica DNA Laboratories, Inc. establishes the biological relationship between the applicant and [REDACTED] as required by subsection 309(a)(1), it does not satisfy the legitimation requirement. As the record contains no evidence to demonstrate that [REDACTED] legitimated the applicant by establishing his paternity under the German Civil Code immediately following the applicant's 1990 birth or that he undertook such action under the South Carolina Code of Laws or the Ohio Revised Code prior to May 2, 2008, the applicant's 18<sup>th</sup> birthday, the applicant has not established that his father legitimated him in accordance with subsection 309(a)(4)(A) of the Act. The AAO does, however, find the DEERS enrollment application, which has been previously discussed, to constitute the sworn acknowledgement of paternity required by subsection 309(a)(4)(B) of the Act.

The DEERS enrollment application form indicates that to sponsor the applicant as a military dependent, [REDACTED] was required to declare the applicant to be his son and to certify this information as true by signing the application in front of a verifying official. The form shows the signatures of both [REDACTED] and a [REDACTED], who is identified as the verifying official, both dated January 3, 2008. Accordingly, prior to the applicant's 18<sup>th</sup> birthday, [REDACTED] is found to have acknowledged his paternity under oath as required by subsection 309(a)(4)(B) of the Act.

In that the record offers documentary evidence of the applicant's eligibility for a certificate of citizenship under section 309(a) of the Act, the AAO will now consider whether it also demonstrates that his father met the physical presence requirements of section 301(g) of the Act, which requires that [REDACTED]

Prior to the birth of [the applicant], 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, or periods of

employment with the United States Government or with an international organization . . . may be included to satisfy the physical-presence requirement of this paragraph . . . .

The evidence of record related to ██████████'s actual physical presence in the United States prior to the applicant's birth includes his U.S. birth certificate, which establishes that he was born in New Jersey on December 27, 1969, the DEERS enrollment application form, which proves that he was a member of the U.S. military as of September 13, 1988; and a copy of his high school transcript, which places him in New Jersey from 1984 through 1988. This evidence is sufficient to establish that ██████████, prior to the applicant's May 2, 1990 birth, was physically present in the United States for at least five years, two of which followed his 14<sup>th</sup> birthday. The applicant has, therefore, established eligibility for a certificate of citizenship under section 309(a) of the Act and the appeal will be sustained.

**ORDER:** The appeal is sustained.