U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BUFFALO, NY Date: JAN 24 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under former sections 309(a) of the Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a)

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 District Director, Buffalo, New York and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 16, 1967 in the Dominican Republic. The applicant's father, [redacted] was born on September 8, 1930 in the Dominican Republic and the applicant claims that [redacted] acquired U.S. citizenship in 1970. The applicant's mother, [redacted] was, at the time of the applicant's birth, a citizen of the Dominican Republic and the record indicates that she remains a citizen of that country. The applicant's parents married on December 30, 1969. The applicant seeks a certificate of citizenship pursuant to former section 309(a) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1409(a), based on the claim that he acquired U.S. citizenship at birth through his natural father.

Based on the evidence of record, the district director determined that the record did not establish that the applicant's father was a U.S. citizen, either through birth or naturalization. She further found the record to contain no evidence that the applicant's father, prior to the applicant's birth, had been physically present in the United States for a period(s) totaling at least ten years. Accordingly, she denied the applicant's Form N-600, Application for Certificate of Citizenship.

On appeal, the applicant states that his father was born on September 8, 1930 and became a citizen in 1970 and that his grandfather, [redacted] was born in Puerto Rico in 1892. The applicant further indicates that he entered the United States as a lawful permanent resident in 1971, but went back to the Dominican Republic several years later. On September 22, 1990, the applicant states, he returned to the United States.

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 was 19 years old on that date, his application must be considered under the requirements of section 309(a), as they existed prior to the 1986 amendments.

Prior to November 14, 1986, section 309(a) of the Act stated:

> (a) The provisions of paragraphs (3), (4), (5), and (7) of section 301(a), and of the paragraph (2) of section 308 of this title shall apply as of the date of birth to a child out-of-wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the 1952 Act stated, 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 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 parents may be included in computing the physical presence requirements of this paragraph.

Should the applicant establish his eligibility under former section 309(a) of the Act, section 301(a)(7) requires that he also prove that, prior to his birth, his father 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 followed his father's 14th birthday. 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.

With regard to the applicant's eligibility under section 309(a) of the Act, the AAO notes that, in 1994, the Dominican Republic enacted the Code for the Protection of Children and Adolescents making the rights of children born-out-of wedlock identical to those born in wedlock. *In re Junior* [redacted] *Beneficiary,* 21 I&N Dec. 589, 591 (BIA 1996). It finds, however, that the applicant must establish that he was legitimated under the requirements for legitimation in existence prior to 1994, i.e., Article III, Section 1 of the Dominican Civil Code, 1958, as he was over 21 years of age on January 1, 1995, the effective date of the new law.[1] Therefore, he must establish that, prior to his 21st birthday, he was legitimated through the acknowledgement of his natural father and the subsequent marriage of his parents. *See Matter of Doble-Pena*, 13 I&N Dec. 367 (BIA 1969).

The AAO finds that the applicant's birth certificate indicates that his birth was registered by [redacted] who identified himself as the applicant's father. As previously noted, the record also includes the marriage certificate of the applicant's parents, who were married on December 30, 1969, a little more than two years after the applicant's birth. Accordingly, the record establishes that the applicant was legitimated under Dominican law in 1969, when he was two years of age. Further, the applicant's birth certificate is sufficient to demonstrate that, at the time of legitimation, the applicant was in the legal custody of his father. A natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980). Therefore, the applicant has met the requirements of former section 309(a) of the Act.

The AAO now considers whether the record establishes that, at the time of the applicant's birth [redacted] was a U.S. citizen who had resided in the United States for a period(s) totaling at least ten years, five of which followed [redacted]' 14th birthday, as required by section 301(a)(7) of the Act.

Although the applicant contends that [redacted] is the son of a U.S. citizen father who became a U.S. citizen in 1970, the applicant has submitted no evidence that establishes that [redacted] was ever issued a certificate of U.S. citizenship based on his birth to [redacted] or that he held a U.S. passport at the time of the applicant's birth. The record, however, contains the following documentation relevant to [redacted] acquisition of citizenship: his Dominican Republic birth certificate showing his birth in 1930 to [redacted];[2] copies of the face pages from his U.S. passports issued in 1975 and 1988; a certification of the 1896 birth of [redacted] in Puerto Rico, which was registered in 1952; a

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[1] The AAO notes that the applicant falls within a specific statutory age bracket and need only establish that he was legitimated during his minority, i.e., prior to his 21st birthday, to satisfy the requirements of section 309(a) of the Act. *INS Interpretation 309.1(b)(2)(i).*

[2] The AAO notes that [redacted]' father is listed on his birth certificate as [redacted] and on other documentation in the record as [redacted] It does not find this inconsistency in the recording of [redacted]s' last name to undercut the identification of [redacted] as [redacted]' father.

copy of the face page from [redacted]' U.S. passport, issued in 1967; and the two Form I-130s, Petition for Alien Relative, filed by [redacted] on behalf of the applicant, which state that he is a U.S. citizen whose citizenship was acquired through a parent(s). The AAO will, therefore, consider the applicant's claim regarding [redacted]' U.S. citizenship in light of the available evidence.

The record establishes that the applicant's grandfather, [redacted] was born in Puerto Rico in 1896, when it was a possession of Spain. It further demonstrates that, as of 1967, he was documented as a U.S. citizen. Although there is no evidence that establishes the actual date on which the applicant's grandfather became a U.S. citizen, the AAO notes that, in 1899, Spain ceded Puerto Rico to the United States under the Treaty of Paris and on March 2, 1917, the U.S. Congress granted U.S. citizenship to all Puerto Rican citizens, even those residents who had not been in Puerto Rico on April 11, 1989, the date on which the Treaty of Paris had been proclaimed. Only those persons who affirmatively and formally chose to retain their existing status or nationality did not acquire U.S. citizenship. When viewed in combination, the certificate establishing the 1896 birth of [redacted] in Puerto Rico, the broad grant of U.S. citizenship in 1917 to those persons born in Puerto Rico prior to the promulgation of the Treaty of Paris and the U.S. passport issued to [redacted] in 1967 establish, by a preponderance of the evidence, that [redacted] was a U.S. citizen at the time of [redacted]' birth in 1930. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The record does not, however, demonstrate that [redacted] acquired U.S. citizenship as a result of his birth to a U.S. citizen 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). As [redacted] was born in the Dominican Republic in 1930, the record must establish his claim to U.S. citizenship under section 1993 of the Revised Statutes of the United States, 1878, which stated:

> All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

The evidence of record does not establish that [redacted] ever resided in the United States prior to [redacted]' 1930 birth. Although [redacted] was born in Puerto Rico and the AAO finds the record to establish that he acquired U.S. citizenship there in 1917, Puerto Rico did not become a part of the United States until January 13, 1941. Therefore, [redacted]'s residence in Puerto Rico at the time of his birth and thereafter does not constitute residence in the United States. The only document that offers any evidence as to [redacted]' residence prior to his son's birth is [redacted] 1930 birth certificate, which describes his father as a resident of La Romana in the Dominican Republic. Accordingly, as the record does not demonstrate that [redacted] resided in the United States prior to 1930, it does not establish that [redacted] acquired U.S. citizenship at birth through his father. While the U.S. passports issued to [redacted] establishes that he held U.S. citizenship as early as 1975, the record does not demonstrate that [redacted] was a U.S. citizen at the time of the applicant's birth, as required for consideration under former section 301(a)(7) of the Act.

In addition, even if it was established that [redacted] was a U.S. citizen at the time of the applicant's birth, the record does not demonstrate that, prior to the applicant's birth, [redacted] was physically present in the United States for a period of ten years, five of which followed his 14th birthday, as required by section 301(a)(7) of the Act. A review of the record finds the applicant to have submitted no evidence of any type that would establish his father's physical presence in the United States prior to his 1967 birth. Moreover, Part 4, Section 8 of the Form N-600, which requests the dates on which an applicant's U.S. citizen father was resident in the United States and which specifies that it is to be completed by applicants who are claiming to have acquired citizenship through their father at the time of their birth has been left blank. Accordingly, the AAO finds that the applicant has not satisfied the requirements of section 301(a)(7) and for this reason, as well, is not eligible for a certificate of citizenship under section 309(a) of the Act. The appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding.

ORDER: The appeal is dismissed.