

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*E2*



FILE:

Office: NEW YORK, NY

Date: **NOV 05 2008**

IN RE:

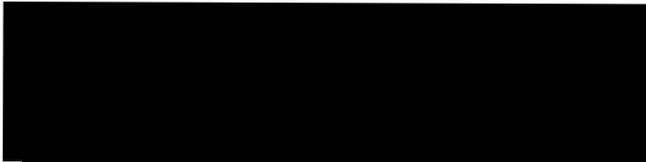
Applicant:



APPLICATION:

Application for Certificate of Citizenship under Sections 309(a) and 301(g)  
of the Immigration and Nationality Act; 8 U.S.C. §§ 1409(a) and 1401(g)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, 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 December 23, 1977 in Honduras. The individual identified as the applicant's natural father, [REDACTED], became a U.S. citizen upon his naturalization on January 10, 1967. The applicant's mother, [REDACTED], is a citizen of Honduras. The applicant's parents never married each other. The applicant seeks a certificate of citizenship pursuant to sections 309(a) and 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409(a) and 1401(g), based on the claim that she acquired U.S. citizenship at birth through her natural father.

The district director determined that the applicant had failed to establish that [REDACTED] was her natural father, that he had acknowledged her or provided her with financial support. Accordingly, the application was denied.

On appeal, the applicant, through counsel, maintains that she has established that [REDACTED] is her natural father, that her birth was acknowledged and that she was financially supported as required by the Act.

Prior to November 14, 1986, section 309 of the former Act required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA).<sup>1</sup> In the present case, the applicant was 9 years old on November 14, 1986. The amendments further provided, however, that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See* section 13 of the INAA, *supra*. *See also* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609. Under *Matter of Sanchez*, 16 I&N Dec. 671 (BIA 1979), children born in Honduras after 1957 are deemed legitimate as a matter of law. Further, legitimation under Honduran civil law occurs where, as here, both parents recognize the child. The applicant's case must therefore be considered pursuant to the provisions of section 309(a) of the former Act.

The applicant has submitted a birth certificate listing Emilio Solano as her father. The applicant's birth was registered in 1978. The record also contains copies of the applicant's 1993 and 1997 school records listing

---

<sup>1</sup> Section 309 of the amended Act 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.

██████████ as her father, the 1997 approved visa petition filed by ██████████ on the applicant's behalf, letter from ██████████ and family friends corroborating the applicant's claim, and a copy of a 2005 Certificate of Maintenance executed by the applicant's mother verifying that ██████████ is the applicant's father and that he "has been taking care of the [applicant's] maintenance." The AAO notes that there is evidence in the record suggesting that a DNA test was conducted to establish the applicant's blood relationship to ██████████, but the results of the test are not in the record.

The AAO finds that the record establishes, by a preponderance of the evidence, that the applicant is the legitimate child of ██████████. The record, however, contains no evidence regarding ██████████ physical presence in the United States. Although the naturalization certificate in the record suggests that ██████████ was physically present in the United States prior to the applicant's birth, there is no evidence to establish that he was present for the period required by section 301(g) of the Act, 8 U.S.C. § 1401(g).<sup>2</sup>

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 her burden in this proceeding. The appeal will, therefore, be dismissed.

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> Section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect prior to the amendments enacted by the Act of November 16, 1986, Pub. L. 99-653, 100 Stat. 3655, provided that

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 ten years, at least five of which were after attaining the age of fourteen years [shall be a citizen of the United States]