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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CHARLOTTE, NC Date:

OCT 08 2008

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Charlotte, North Carolina, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born on March 29, 1989 in the Bahamas. The applicant claims that his father is [REDACTED], a U.S. citizen born on July 28, 1968. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were never married to each other. The applicant's birth certificate lists only his mother. The record contains a "Deed of Grant of Care, Control and Guardianship" executed in the Bahamas in 2004 and awarding custody of the applicant to [REDACTED], his "putative father." The applicant presently seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father.

The field office director denied the application finding that the applicant had failed to establish that he was the biological child of [REDACTED]. On appeal, the applicant's father maintains that he is the applicant's biological parent. The applicant does not submit any evidence with the appeal.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1989. Section 301(g) of the Act, 8 U.S.C. § 1401(g), is therefore applicable to this case. Additionally, because the applicant was born out of wedlock, he is subject to the requirements of section 309(a) of the Act, 8 U.S.C. § 1409(a).<sup>1</sup>

Section 301 of the Act, 8 U.S.C. § 1401, provides, in relevant 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 . . . .

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,

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(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 AAO notes that the applicant's birth certificate does not list his father's name, nor is there any other evidence in the record suggesting that [REDACTED] is the applicant's biological father. The AAO remands this matter to the director to request that the applicant provide evidence that [REDACTED] is the applicant's father. The applicant may submit, for example, the results of DNA or other parentage testing. Information about parentage testing and a list of accredited testing facilities is available on the website of the American Association of Blood Banks at <http://www.aabb.org/Content/Accreditation>. The director shall also request that the applicant provide evidence to establish the requirements of section 309(a)(3) and (4) of the Act, listed above.

The applicant must also establish that his father was physically present in the United States for five years prior to 1989, two of which were while over the age of 14. The AAO notes that the record does not contain any evidence of [REDACTED] physical presence. The AAO therefore finds it necessary to remand the matter to the director to request that the applicant submit evidence of his father's physical presence in the United States for five years prior to 1989.

Upon receipt and consideration of the requested evidence, the director shall issue a new decision.

**ORDER:** The matter is remanded to the director for further action consistent with this decision.