

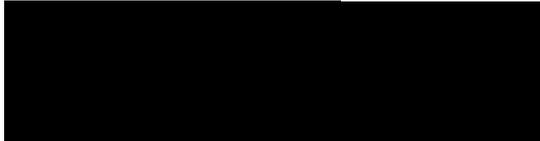
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U.S. Citizenship  
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FILE: [REDACTED] Office: ORLANDO, FL Date: SEP 09 2008

IN RE: Applicant: [REDACTED]

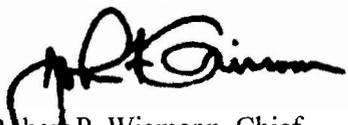
APPLICATION: Application for Certificate of Citizenship under Sections 309 and 301 of the Immigration and Nationality Act; 8 U.S.C. §§ 1409 and 1401.

ON BEHALF OF APPLICANT:

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 Acting Field Office Director, Orlando, Florida, 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 January 14, 1977 in Montreal, Canada. The applicant's father, [REDACTED], was born in the United States on July 4, 1934. The applicant's mother, [REDACTED], is not a U.S. citizen. The applicant's parents were married in 1981 in Elkton, Maryland. 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 he acquired U.S. citizenship at birth through his father.

The acting field office director denied the application finding that the applicant had failed to provide evidence of his father's required physical presence in the United States. On appeal, the applicant maintains that his father had the required physical presence and submits a marriage certificate issued in Connecticut in 1953 as additional evidence.

"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 the present matter was born in 1977. Section 301(a)(7) of the former Act, the predecessor to current section 301(g), therefore applies to the present case.

Section 301(a)(7) of the former Act states 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 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Prior to November 14, 1986, section 309 of the former Immigration and Nationality Act (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). 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. In the present case, the applicant was nine years old on November 14, 1986.

At the outset, the AAO must determine whether the applicant was legitimated. In accordance with Article 594 of the new Civil Code of Quebec, "[a]ll children whose filiation is established have the same rights and obligations, regardless of the circumstances of birth." The AAO notes further that the applicant's parents were married to each other in 1981. The AAO thus finds that the applicant was legitimated. The AAO further finds that the applicant's legitimation occurred prior to November 14, 1986. This case will therefore be considered pursuant to the provisions of the former section 309(a) of the Act.

Former section 309(a) of the Act, as noted above, requires the applicant to establish that he was legitimated prior to his 21<sup>st</sup> birthday. The applicant's 21<sup>st</sup> birthday was on January 14, 1998. The AAO therefore concludes that the applicant was legitimated prior to his 21<sup>st</sup> birthday.

The question remains whether the applicant can establish eligibility for citizenship under section 301(a)(7) of the Act. To do so, the applicant must demonstrate that his father was physically present in the United States for 10 years prior to January 14, 1977, five of which after his 14<sup>th</sup> birthday (on July 4, 1948).

The record contains the following evidence relating to the applicant's father's physical presence prior to 1977: 1) the applicant's father's birth certificate filed in 1934; 2) the applicant's father's marriage certificate issued in the State of Connecticut in 1953; 3) a State of Georgia Warranty Deed filed in 1973; a State of New York Indenture record filed in 1968. The AAO finds that the record sufficiently establishes that the applicant's father had the required physical presence in the United States prior to the applicant's birth.

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 met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.