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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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JUN 02 2009

FILE: Office: DALLAS, TX Date:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 309 of the former Immigration and Nationality Act, 8 U.S.C. §1409.

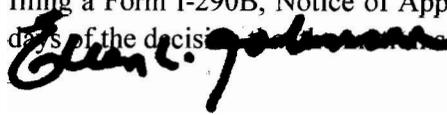
ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision. You have 30 days to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Dallas, Texas, 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 February 20, 1962 in Liberia. Her birth certificate indicates that her parents are [REDACTED] and [REDACTED]. The applicant's parents were not married to each other. The applicant claims that her father was a native-born U.S. citizen.¹ She seeks a certificate of citizenship pursuant to section 309 of the Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1409, claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim. The director found that the applicant had failed to demonstrate that her father was physically present in the United States as required by the statute.

On appeal, the applicant indicates that additional evidence would be submitted within 30 days. See Notice of Appeal to the AAO, Form I-290B. To date, no such evidence has been submitted.

"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). The applicant in the present matter was born in 1962. 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or

¹ The AAO notes that the applicant's file does not contain evidence of her father's birth in the United States. Indeed, the applicant further indicates in her Form N-600, Application for Certificate of Citizenship, that her father's date of birth is unknown.

under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

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). In the present case, the applicant was over the age of 18 years on November 14, 1986. Her case will therefore be considered pursuant to the provisions of the former section 309(a) of the Act.

Section 309(a) of the Act, as in effect prior to the 1986 amendments, requires only that the applicant establish that she was legitimated prior to her 21st birthday.

The AAO finds that the applicant was not legitimated in accordance with the laws of Liberia. Pursuant to *Matter of Duncan*, 15 I&N Dec. 272 (BIA 1975), under Title 18 section 530 of the Liberian Code of Laws of 1956, a child born in Liberia out of wedlock may be legitimated by a court order. The Act Adopting a New Domestic Relations Law, as provided by the Library of Congress (LL File No. 98-2054), approved on April 10, 1973, repealed Title 10 of the Liberian Code of Laws of 1956 and enacted a new Domestic Relations Law to be designated Title 9 of the Liberian Code of Laws revised. According to Title 9, Part III, Subchapter D, Sub Section 4.91, children born out of wedlock are legitimated when the natural parents marry. Title 9 applies retrospectively to all cases prior to its effective date as well as subsequent cases. Children born out of wedlock in Liberia may also be legitimated upon an application made to the probate court by the natural father. There is no evidence in the record to suggest that the applicant was legitimated in accordance with the laws of Liberia.

The AAO additionally finds that the applicant failed to establish she was legitimated by her father in accordance with legitimation laws in any state in which her father resided, prior to her twenty-first birthday.

Accordingly, the AAO finds that the applicant has failed to establish that she was legitimated by her father, as required by section 309 of the former Act. She is therefore ineligible to derive citizenship under section 309 of the Act, and her father's physical presence in the United States need not be addressed.

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 not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.