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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BUFFALO, NY

Date: MAR 03 2009

IN RE: Applicant: [REDACTED]

PETITION: Application for Certificate of Citizenship under section 303 of the Immigration and Nationality Act, 8 U.S.C. § 1403

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 that the motion seeks 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 Operations 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 in Panama May 16, 1954. The applicant's alleged father, [REDACTED], now deceased, was born in Tennessee. The applicant's mother, [REDACTED] was, at the time of the applicant's birth, a citizen of Panama, but naturalized on October 26, 2000, when the applicant was 46 years of age. The record does not establish that the applicant's parents ever married. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father.

The field operations director denied the application under former section 320 of the Immigration and Nationality (the Act), 8 U.S.C. § 1431, as well as sections 303 and 309, 8 U.S.C. §§ 1403 and 1409. *Decision of the Field Operations Director*, dated December 16, 2008.

On appeal, the applicant asserts that he is a U.S. citizen under section 303(b) of the Act based on his birth to [REDACTED] and that, although born out of wedlock, his 1954 birth must be considered legitimate under the Constitution of Panama of March 1, 1946.

Section 303 of the Act, under which the applicant claims to have acquired U.S. citizenship states:

- (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.
- (b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title [Panama Canal Company], is declared to be a citizen of the United States.

The AAO acknowledges the applicant's claim that under Panamanian law he was legitimate at birth and notes that his legitimacy is not at issue in this proceeding. Instead, as someone born in the Republic of Panama and seeking U.S. citizenship under section 303(b) of the Act, the applicant must prove that [REDACTED] is his natural father and that, at the time of his birth, [REDACTED] was employed by the U.S. government or the Panama Railroad Company or its successor, the Panama Canal Company. The AAO turns first to the issue of whether the record establishes [REDACTED] as the applicant's natural father.

Documentation of the applicant's birth includes a birth certificate issued by the hospital where the applicant was born and signed on May 16, 1954, which identifies the applicant's mother as [REDACTED] and his father as [REDACTED]; a certificate issued by the Assistant Registrar,

Auxiliary Registry of the Vital Statistics of Panama, which indicates that the applicant's birth was registered on June 22, 1954 by his mother and that no father was identified; an incomplete birth record issued on December 23, 1982 by the Ministry of the Interior and Treasury showing [REDACTED] as the applicant's mother; and a birth certificate issued by the Board of Elections of Panama on November 1, 2006, listing the applicant's parents as [REDACTED] and [REDACTED]. An overseas review of the applicant's 1982 birth certificate found it to include notations that indicated the certificate had been amended in 1972 to list [REDACTED] husband as his father, but that the amendment had been revoked in 1981 as [REDACTED] had died nearly one year prior to the applicant's birth. A subsequent notation on the certificate indicates that the registration was amended to list [REDACTED] as the applicant's father.

A notarized statement from [REDACTED], dated March 25, 1983, in which he declares the applicant to be his only son, supports the birth certificates issued in 1982 and 2006, and the AAO notes that the applicant claimed [REDACTED] as his father on the Optional Form 230B, Application for Immigrant Visa and Alien Registration, he filed to immigrate to the United States in 1983.

The AAO notes, however, that other evidence submitted by the applicant, specifically the documentation of [REDACTED]'s employment during the period 1946 to 1955, undermines Mr. [REDACTED] claim to paternity. A *Request for Report of Loyalty Data on American and Appointees*, dated October 13, 1953 and prepared by the Civilian Personnel Division of the Southern Area Command, indicates that [REDACTED] lived in the United States from the date of his November 28, 1946 discharge from the U.S. military until June 1953. Subsequently, between September 1953 and June 1955,¹ [REDACTED], as stated in his *Application for Position of Teacher in the Canal Zone Schools*, dated February 26, 1955, was employed as an elementary school teacher in Germany. He then returned to the United States, signing his appointment affidavit for a teaching position in the Panama Canal Zone on August 15, 1955 in New Mexico. A *Notification of Personnel Action*, dated September 14, 1955, reports that [REDACTED] arrived in Panama on September 3, 1955 and entered on duty on September 9, 1955.

The regulation at 8 C.F.R. § 341.2 provides that the burden of proof shall be on the applicant to establish the claim to citizenship by a preponderance of the evidence. In the present matter, the contemporaneous birth certificate issued by the hospital in which the applicant was born identifies an individual other than [REDACTED] as his father and the certificate documenting [REDACTED] registration of her son's birth, which occurred approximately one month later, also fails to identify [REDACTED] as the applicant's birth father. While the applicant listed [REDACTED] as his father on his Optional Form 230B in 1982, the AAO notes that the underlying Form I-130 visa petition on which the applicant's visa application was based was filed by [REDACTED] not [REDACTED]. Moreover, the employment documentation provided to establish [REDACTED] employment with the U.S. military and the Panama Canal Company indicates that he did not arrive in Panama to begin his employment

¹ A Notice of Personnel Action, dated April 12, 1954, indicates that [REDACTED] was hired on this date in Munich, Germany by the Department of the Army from a "non-appropriated fund agency without a break in service." A second Notice of Personnel Action, dated August 3, 1955, shows that [REDACTED] resigned his teaching post on July 3, 1955.

until approximately four months after the applicant's birth. In light of this evidence, the AAO does not find the amended 1982 and the 2006 birth certificates identifying ██████████ as the applicant's father and ██████████'s 1983 statement acknowledging the applicant as his son to offer sufficient proof of ██████████'s paternity. The applicant has not demonstrated that he was born to a U.S. citizen. Accordingly, he is not eligible for a certificate of citizenship under section 303 of the Act.

As the record does not establish ██████████'s paternity, the AAO finds no purpose would be served in considering whether the applicant may qualify for citizenship under section 309 of the Act, which provides for the acquisition of U.S. citizenship by children born out of wedlock to a U.S. citizen outside the United States.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). As previously noted, the regulation at 8 C.F.R. § 341.2 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." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. The appeal will, therefore, be dismissed.

Order: The appeal will be dismissed.