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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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: OCT 20 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under former section 309(a) of the Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a)

ON BEHALF OF APPLICANT:

[redacted]

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 that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 30, 1954 in the Dominican Republic. The applicant's father, , now deceased, was born on January 20, 1916 in Puerto Rico, and, based on his 1916 birth, acquired U.S. citizenship under the Act of March 2, 1917, Pub.L. 64-368. 39 Stat. 951. The applicant's mother, was, at the time of the applicant's birth, a citizen of the Dominican Republic, but became a naturalized U.S. citizen in 1993. The applicant's parents married on January 24, 1960. The applicant seeks a certificate of citizenship pursuant to former section 309(a) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1409(a), based on the claim that he acquired U.S. citizenship at birth through his father.

Having reviewed the evidence of record, the district director determined that it did not establish that the applicant's father had been physically present in the United States for a period(s) totaling at least ten years prior to the applicant's birth, as required by former section 301(a)(7) of the Act. She denied the applicant's Form N-600, Application for Certificate of Citizenship, accordingly. *Decision of the District Director*, dated September 3, 2008.

On appeal, the applicant asserts that the record establishes his claim to U.S. citizenship. *Form I-290B, Notice of Appeal or Motion*, dated September 24, 2008; *Brief for Petitioner*, dated September 25, 2008.

Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached twenty-one years of age. As of that date, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) amended section 309, applying the changed provisions to persons who were not yet 18 years of age. As the applicant was 32 years old on November 14, 1986, his application must be considered under the requirements of section 309(a), as they existed prior to the 1986 amendments.

Prior to November 14, 1986, section 309(a) of the Act stated:

> (a) The provisions of paragraphs (3), (4), (5), and (7) of section 301(a), and of the paragraph (2) of section 308 of this title shall apply as of the date of birth to a child out-of-wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the 1952 Act stated, in pertinent part, 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 parents may be included in computing the physical presence requirements of this paragraph.

The registration of the applicant's birth by his father and the marriage of his parents in 1960 demonstrate the applicant's legitimation prior to his 21st birthday in accordance with the requirement of former section 309(a) of the Act. *Matter of Doble-Pena*, 13 I&N Dec. 366, 367-368 (BIA 1969). Therefore, the only issue before the AAO is whether the record also demonstrates that, prior to the applicant's birth, his father was physically present in the United States or its outlying possessions for a period(s) totaling not less than ten years, at least five of which followed his father's 14th birthday. Honorable service in the U.S. military, employment with the U.S. Government or with certain international organizations by U.S. citizen parents may qualify as physical presence in the United States.

The district director found the record to establish that the applicant's father had lived in Puerto Rico until 1937, when he departed for the Dominican Republic and that he had not returned until 1961. As Puerto Rico was not part of the United States until January 13, 1941, the district director determined that the applicant's father's presence in Puerto Rico prior to 1937 did not satisfy the requirements of former section 301(a)(7) of the Act. The AAO notes, however, that in *Matter of Y,* 7 I&N Dec. 667 (Reg. Comm. 1958), the legacy Immigration and Naturalization Service (INS) found, in pertinent part, that "[a]s long as the citizen parent resided at any time (for the required period, prior to the birth of the child) in a territory which was then a United States possession . . . the [derivative citizenship' requirement in section 201(g) [of the Nationality Act of 1940, (the Nationality Act)] with respect to the parent's residence is satisfied." Further, in *Matter of V*, 9 I&N Dec. 558 (Reg. Comm. 1962), legacy INS found the term "outlying possession" in section 301(a)(7) of the Act to include "the territories enumerated in section 101(a)(29) of the Act [American Samoa and Swains Island]" and "any other territory, which was, in fact and law, an outlying possession of the United States during the period of a citizen parent's physical presence therein." In that Puerto Rico became a possession of the United States on April 11, 1899 under the Treaty of Paris, the AAO concludes that the presence of the applicant's father in Puerto Rico prior to his departure in 1937, when it was a U.S. territory, may be used to establish the applicant's eligibility under former section 301(a)(7) of the Act.[1]

The record contains the following evidence related to the presence of the applicant's father in Puerto Rico prior to 1937:

- birth certificate, which establishes that he was born in Penuelas, Puerto Rico on January 20, 1916.

- An affidavit sworn by dated July 31, 1991, that states she is older sister and that he lived with her in Puerto Rico from the age of 7 years until he was 19 or 20 years old.

[1] The AAO notes that it erred when, in an unpublished decision, dated January 24, 2008, it reached the opposite conclusion, finding physical presence in Puerto Rico prior to January 13, 1941 did not satisfy the requirements of section 301(a)(7) of the 1952 Act.

- An affidavit sworn by , dated July 8, 1991, who states that he is a brother of born in 1922, and knows that s lived in Puerto Rico until 1937 when he moved to the Dominican Republic.

- A statement from School Superintendent, Penuelas School District, dated July 14, 1992, who indicates that was a student at the Webster Elementary School through the fourth grade.

- An October 30, 1992 affidavit, sworn by who states that he is an older brother of and that, in 1937, they traveled together to the Dominican Republic from Puerto Rico.

The AAO notes that the burden in this proceeding is on the applicant to prove, by a preponderance of the evidence, that his father was physically present in the United States or an outlying possession of the United States for a total of at least ten years prior to his birth, five of which were subsequent to January 20, 1930, his father's 14th birthday. While the AAO notes the limited nature of the documentary evidence provided by the applicant, it acknowledges the difficulty of obtaining records for an individual who was born in Puerto Rico in 1916 and died more than 20 years ago. It will, therefore, accept the affidavits provided by the applicant's paternal aunt and uncles, persons with direct personal knowledge of applicant's father's life prior to his birth. *See* 8 C.F.R. § 103.2(b). Based on their consistent testimony, the AAO finds these affidavits to establish that the applicant's father resided in Puerto Rico from the date of his birth in 1916 until he moved to the Dominican Republic in 1937 at 21 years of age. Accordingly, the applicant has demonstrated that his father was physically present in an outlying possession of the United States for at least ten years prior to his birth, five of which followed his father's 14th birthday.

As the applicant has satisfied the requirements of former sections 301(a)(7) of the Act, he is eligible for a certificate of citizenship under former section 309(a) of the Act. The appeal will be sustained.

ORDER: The appeal is sustained.