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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [Redacted] Office: SAN DIEGO, CA Date: **FEB 17 2010**

IN RE: Applicant: [Redacted]

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

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, San Diego, California, 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 July 4, 1969 in Alberta, Canada. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant was born out of wedlock. The applicant claims that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's claim upon finding that he had failed to establish that his father had the required physical presence in the United States.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship as the out-of-wedlock child of a U.S. citizen pursuant to section 309 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a) (1969). The appeal is accompanied, in relevant part, by an affidavit executed by the applicant's biological mother stating that the applicant's father was a U.S. serviceman. See Affidavit of [REDACTED]

The AAO notes that "[t]he 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 was born on 1969. Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7)(1966), the predecessor to current section 301(g), therefore applies to the present case.<sup>1</sup>

Section 301(a)(7) of the former Act stated 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 under the law of

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<sup>1</sup> Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

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 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).<sup>2</sup> In the present case, the applicant was 17 years old on November 14, 1986. His case must therefore be considered pursuant to the provisions of the amended section 309(a) of the Act.

Section 309 of the Act, as amended, states:

(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,
- (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 applicant claims that his father was a U.S. citizen serviceman. In support of his claim, the applicant provides an affidavit from his biological mother and letters from Canadian adoption agencies asserting that his father was a U.S. citizen. These documents fail to establish, by clear and convincing evidence, that the applicant had a "blood relationship" with a U.S. citizen parent as is required by section 309(a) of the Act. The AAO further finds that the applicant cannot establish that his father fulfilled any of the

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<sup>2</sup> The amendments further provided 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.*

remaining requirements of section 309(a) of the Act. The record shows that the applicant was not legitimated in accordance with the laws of Alberta, Canada. See May 1997 Advisory Opinion from the Library of Congress (LOC 97-2009) (stating that legitimation in the Province of Alberta is accomplished by the marriage of the child's natural parents). The record also lacks any evidence that the applicant's father acknowledged paternity or that paternity was adjudicated by a competent court.

Finally, the AAO notes that the applicant has failed to establish, by a preponderance of the evidence, that his alleged biological father was physically present in the United States for 10 years prior to 1969, five of which while over the age of 14. The AAO notes in this regard that the applicant's father's identity, residence and date of birth are unknown.

"There 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). 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 AAO finds that the applicant has not met his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.