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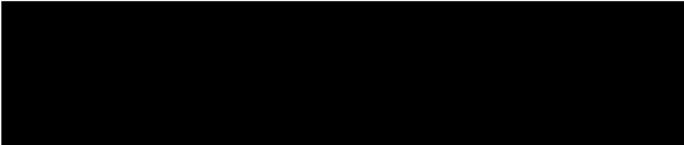
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE:



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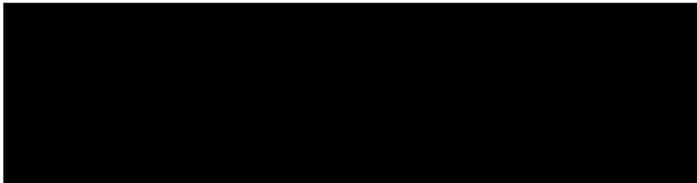
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IN RE:



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

ON BEHALF OF APPLICANT:



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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Tampa, 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 August 26, 1968 in Germany. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's father is a native born U.S. citizen, born in Alabama on May 17, 1945. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

The district director determined that the applicant did not acquire U.S. citizenship from her father because, in relevant part, she failed to establish that he agreed in writing to provide her with financial support as is required by section 309(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a)(3).

On appeal, the applicant, through counsel, maintains that the district director erred in failing to consider her case under former section 309(a) of the Act, prior to the 1986 amendment that included, *inter alia*, the financial support requirement. *See* Applicant's Appeal Brief.

"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 this case was born in 1968. Section 301(a)(7) of the former Act, 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:

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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 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 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 her 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). In the present case, the applicant was 18 years old on November 14, 1986. Her case must 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 21<sup>st</sup> birthday.

The Board of Immigration Appeals in *Matter of Lauer*, 12 I&N Dec. 210 (BIA 1967), found that, under German law, legitimation is accomplished either by subsequent marriage of the natural parents or upon application by the natural father that the child be declared legitimate by order of the court or state. According to a 1998 advisory opinion from the Library of Congress (LL 98-1936), German law still retains the institution of legitimation, even though the differences between legitimate and illegitimate children have been removed to a considerable extent by legislation of 1969 and 1997. German law provides only three modalities for the legitimation of a child born out of wedlock: (1) legitimation by subsequent marriage between the father and the mother of the child; (2) declaration of legitimacy upon application by the father. To be effective, such declaration must be made by the family court with venue over the child; and (3) declaration of legitimacy upon application by the child. This form of legitimacy also requires a court order and is only available if the parents were engaged at the time of birth and the engagement has been dissolved by death of the parents.

The record shows that the applicant's father has resided in Florida since 1964 (except while stationed in Germany during his service with the U.S. Army from 1967 to 1970). Paternity in the State of Florida is established by (1) the marriage of the parents, (2) an adjudicatory hearing or proceeding, or (3) a notarized voluntary acknowledgment of paternity. *See Fla. Stat. §§ 742.091 and 742.10(1) and (3).*

The record contains DNA evidence establishing that the applicant is her father's biological child. The record also contains a copy of a notarized acknowledgment of paternity executed in Germany in 1969 whereby the applicant's father recognized her as his daughter. The AAO finds that the applicant's father's 1969 notarized acknowledgment of paternity establishes that she was legitimated in accordance with the laws of Florida (her father's residence). The applicant has thus established

that she was legitimated prior to her 21<sup>st</sup> birthday as is required by section 309(a) of the former Act (as in effect prior to the 1986 amendments).

The applicant has also established that her father was physically present in the United States for the period required by former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1968). The record shows that the applicant's father resided in the United States from his birth in 1945 to 1967, when he was stationed in Germany while serving in the U.S. Army.

The regulation at 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 met her burden of proof and the appeal will be sustained.

**ORDER:** The appeal is sustained.