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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: [REDACTED] Office: MIAMI, FLORIDA Date: JAN 26 2010

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

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, Miami, 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 in Venezuela on April 22, 1981. *See Birth Certificate for [REDACTED]* The applicant's father, [REDACTED], was born in Cuba on November 13, 1940, and he obtained a U.S. Certificate of Naturalization on February 15, 1972. *See Certificate of Naturalization for [REDACTED]* The applicant's mother was born in Peru and she became a U.S. citizen on December 15, 2004. *See Certificate of Naturalization for [REDACTED]* The record reflects that the applicant's parents married in Florida on November 20, 1987, six years after the applicant's birth. *See Marriage Certificate.* The applicant seeks a certificate of citizenship pursuant to former sections 309 and 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship through his father.

The director found that the applicant failed to establish eligibility for a certificate of citizenship under former section 301(g) of the Act, 8 U.S.C. § 1401(g), and denied the application. *See Decision of the Director*, dated Dec. 15, 2008. On appeal, the applicant contends through counsel that the director erred in denying the application. *See Brief in Support of Appeal.* Counsel correctly claims that the director erroneously relied on inapplicable facts to deny the application. *See id; see also Decision of the Director* (referring to an individual named [REDACTED]). Although regrettable, the director's errors are harmless because the AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").

Because the applicant was born out of wedlock, the derivative citizenship provisions set forth in former section 309 of the Act apply to this case. Former section 309(a) of the Act required that paternity be established by legitimation before a child turned 21. *See* former section 309(a) of the Act. Former section 309(a) of the Act applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

Here, the applicant's paternity was established by legitimation in Venezuela in 1981. The applicant's father is named on his birth certificate (issued May 27, 1981) and the record contains a contemporaneous, formal acknowledgement of paternity by legitimation executed by the applicant's father. *See Birth Certificate for [REDACTED]* and *Acknowledgment of Paternity and Legitimation.* Accordingly, former section 309(a) of the Act applies to this case. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, *supra.* The applicant satisfies the provisions of former section 309(a) of the Act because his paternity was established by legitimation before he turned 21. *See Birth Certificate and Acknowledgment, supra.*

The applicant also must prove that his father meets the physical presence requirements set forth in the Act. Former section 301(g) of the Act, 8 U.S.C. § 1401(g) (1981), provided, 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years

The applicant must therefore establish that his father was physically present in the United States for ten years before his birth in April, 1981, and that at least five of these years were after his father's fourteenth birthday in November, 1954. *See id.*

Here, the record contains ample evidence that the applicant's father, [REDACTED] was physically present in the United States for the requisite period. [REDACTED] was paroled into the United States on September 3, 1961. The applicant's father resided in Florida from 1961 to 1966. *See Form N-400, Application to File Petition for Naturalization; Form G-325A, Biographic Information*, dated Nov. 28, 1967; *Letter from [REDACTED] dated May 18, 2006; Letter from [REDACTED], dated May 22, 2006; Letter from [REDACTED] dated May 22, 2006.* The record indicates that from 1966 to 1972 or 1973, the applicant's father resided in Puerto Rico. *See Certificate of Naturalization for [REDACTED] dated Feb. 15, 1972* (indicating address in Puerto Rico); *Form N-405, Petition for Naturalization*, dated Nov. 18, 1971; *Form N-400, Application to File Petition for Naturalization; Form G-325A, Biographic Information, supra; Affidavit of [REDACTED] dated Sept. 12, 2006; Letter from [REDACTED] supra; Letter from [REDACTED], supra; Letter from [REDACTED], supra.* The record reflects that [REDACTED] then returned to Florida and resided there from 1972 or 1973 to 1984. *See Affidavit of [REDACTED], supra; Letter from [REDACTED] dated Sept. 12, 2006; Florida Property Deeds*, dated Feb. 28, 1973 and Feb. 24, 1979; *Florida High School Equivalency Diploma*, dated 1974; *Evidence of Florida State Corporations*, filed in 1975, 1976 and 1979. Additionally, the record contains a copy of the applicant's father's social security statement, reflecting his earnings in the United States for every year from 1961 through 1981. *See Social Security Statement*, dated Sept. 16, 2002.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967). The applicant must meet this burden by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Here, the applicant has established by a preponderance of the evidence that his father was physically present in the United States for ten years before the applicant's birth in 1981. Accordingly, the applicant is eligible for a certificate of citizenship under former section 301(g) of the Act.

ORDER: The appeal is sustained.