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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: [REDACTED] Office: BUFFALO, NY

Date:

JUL 15 2010

IN RE: Applicant: [REDACTED]

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

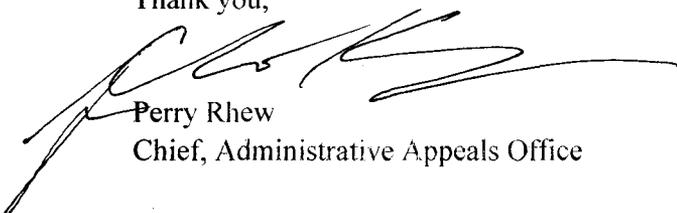
ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Buffalo, New York. 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 on July 8, 1999 in Afghanistan. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on October 20, 1995. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on July 10, 2008, when he was nine years old. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father.

The field office director determined that the applicant did not acquire U.S. citizenship through his father under either section 309(a) of the Act, 8 U.S.C. § 1409(a), former section 321 of the Act, 8 U.S.C. § 1432 (repealed), or section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director's determination was based on his finding that the applicant had not been legitimated by his father and therefore did not meet the definition of a "child" for citizenship purposes. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth through his father pursuant to section 309(a) of the Act. See Statement Accompanying Form I-290B, Notice of Appeal to the AAO.

The applicable law for transmission of U.S. citizenship is the law in effect at the time of the applicant's birth. See *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in this case was born in 1999. Section 309 of the Act, as amended by the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), is therefore applicable to his case.

Section 309 of the Act provides, in pertinent part, that:

(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.

There record contains no evidence that the applicant was legitimated under the laws of Afghanistan or Connecticut, his present state of residence. Paternity in Connecticut is established by marriage of the natural parents, court order or a written acknowledgement filed with the appropriate state agency. *See Conn. Gen. Stat. §§ 45a and 46b.* The applicant's birth parents were never married and the record contains no court order or written acknowledgement on file with the appropriate Connecticut agency. Although the applicant's father is identified on his Afghani birth certificate, the applicant has not established that this identification alone establishes legitimation under the laws of Afghanistan.

The record also fails to show that the applicant's paternity was acknowledged in writing or established by adjudication; and that the applicant's father has agreed in writing to provide financial support for the applicant until he reaches the age of 18. On appeal counsel asserts that the applicant's father "acknowledged the paternity and that is why the son was given the immigrant visa and now is having a LPR status." The record does not support counsel's assertion. The applicant was admitted to the United States pursuant to an approved alien relative petition filed by his stepmother. Those records contain, in pertinent part, only the marriage certificate of his father and stepmother and the applicant's birth certificate. The record contains no acknowledgement by the applicant's father of his paternity in writing and under oath. On appeal, counsel further states, that the applicant's father is willing to provide a DNA test and a written acknowledgement of paternity, but neither is currently part of the record. The applicant therefore has not established eligibility for U.S. citizenship under section 309(a) of the Act.

The AAO further notes that the applicant cannot establish eligibility for U.S. citizenship under section 320 of the Act absent evidence of legitimation. Section 320 of the Act, as amended by the CCA, provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday.¹

¹ The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, the CCA applies to his case. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, which was repealed by the CCA, is therefore inapplicable to this case.

Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

To acquire citizenship under this section, the applicant must meet the definition of a “child” at section 101(c) of the Act, 8 U.S.C. § 1101(c), which 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 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

As previously noted, the applicant has not established that he was legitimated under either the laws of Afghanistan or the State of Connecticut. Consequently, the applicant has not established his eligibility for U.S. citizenship pursuant to section 320 of the Act.

“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). The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.