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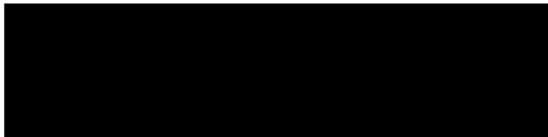
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE:



Office: SAN JUAN, PUERTO RICO

Date: JUL 30 2010

IN RE:



APPLICATION: Application for Certificate of Citizenship under former sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401, 1409 (1967)

ON BEHALF OF PETITIONER:



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, San Juan, Puerto Rico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Dominican Republic on July 6, 1967, to [REDACTED]. The applicant's father is not listed on his birth certificate, and his parents never married. The applicant's father is a U.S. citizen based on his birth in Puerto Rico on August 9, 1941. The applicant's mother was born in the Dominican Republic and was not a U.S. citizen at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The director determined that the applicant failed to demonstrate that his paternity was established by legitimation before he turned 21, as required by former section 309(a) of the Act, 8 U.S.C. § 1409(a), and denied the application accordingly. *See Decision of the Field Office Director*, dated July 23, 2009. On appeal, the applicant contends through counsel that his paternity was established by legitimation under the laws of Puerto Rico on October 31, 2007. *See Form I-290B, Notice of Appeal*, filed Aug. 21, 2009; *Brief on Appeal* at 2.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1967. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.<sup>1</sup>

Former section 301(a)(7) of the 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 . . . 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. . .

Additionally, because the applicant was born out of wedlock, he must satisfy the provisions set forth in former section 309(a) of the Act.<sup>2</sup> Former section 309(a) of the Act provided, in pertinent part:

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<sup>1</sup> Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

<sup>2</sup> 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

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

Therefore, the applicant must establish that his father was physically present in the United States for no less than ten years before his birth on July 6, 1967, and that at least five of these years were after his father's fourteenth birthday on August 9, 1955. Additionally, the applicant must establish that his paternity was established by legitimation before his twenty-first birthday on July 6, 1988.

The applicant contends that he meets the requirements of former section 301(a)(7) of the Act because he is not seeking to be classified as a "child" under section 101(b)(1)(C) of the Act, 8 U.S.C. § 1101(b)(1)(C). *See Brief on Appeal* at 3 – 5. Although the applicant is correct that the general definition of child in section 101(b)(1)(C) of the Act is inapplicable to his case, his contention lacks merit. Because the applicant was born out of wedlock, in order to acquire citizenship at birth under former section 301(a)(7) of the Act, he must meet the legitimation requirements set forth in former section 309(a) of the Act. Accordingly, he must show that his paternity was established by legitimation before he turned 21. *See* former section 309(a) of the Act.

The applicant further contends that he meets the statutory requirements because he has been legitimated under the laws of Puerto Rico. *See Brief on Appeal* at 5 - 8. Specifically, the applicant claims that he was legitimated at birth because there is no distinction between children born in and out of wedlock under Puerto Rican law. *Id.* at 5 – 6. In the alternative, the applicant claims that he was legitimated on October 31, 2007, when the Supreme Court of San Juan, Puerto Rico, granted his complaint for parental relationship, and that he should be considered a U.S. citizen from the date of legitimation. *Id.* at 6 – 8. These contentions lack merit.

First, under Puerto Rican law, a child born out of wedlock becomes the legitimate son of his father if paternity has been established. *Matter of Bautista*, 17 I&N Dec. 122, 123-24 (BIA 1979) (holding that acknowledgment by the father is one method of establishing paternity in Puerto Rico). Here, the applicant's paternity was not established before he turned 21. *Cf. Bautista, supra* (holding that paternity was established by legitimation where father acknowledged his children a few days after their birth). Rather, the applicant's paternity was not established until his father's acknowledgment and the court's determination on the applicant's complaint for parental relationship, filed on November 28, 2006. *See Jenison A. Dominguez v. Jimmy Torres Cruz*, Supreme Court of San Juan, No. K FI2006-0030 (Determination of Facts and Legal Conclusions and Amended Decision). At the time of the court's determination in 2007, the applicant was 40 years old. Accordingly, the applicant has not shown that his paternity was established by legitimation as required by former section 309(a) of the Act.

Second, the applicant provides no legal support for his contention that as the biological and legitimated son of a U.S. citizen, he should be considered a U.S. citizen from the date of his legitimation in 2007. Former section 309(a) of the Act explicitly requires that paternity of a child must be “established while such child is under the age of twenty-one years by legitimation,” and the applicant’s paternity was not established by legitimation before he turned 21.

Finally, the applicant has not established that his paternity was established by legitimation under the laws of the Dominican Republic. *See Matter of Doble-Pena*, 13 I&N Dec. 366, 367 (BIA 1969) (finding under former Dominican law that legitimation required marriage of the birth parents and acknowledgment).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in former section 309(a) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed. This dismissal is without prejudice to the filing of an Application for Naturalization (Form N-400).

**ORDER:** The appeal is dismissed.