

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E2



FILE:

Office: NEW YORK, NY

Date:

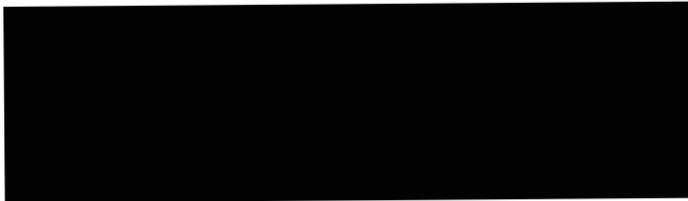
MAR 30 2010

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

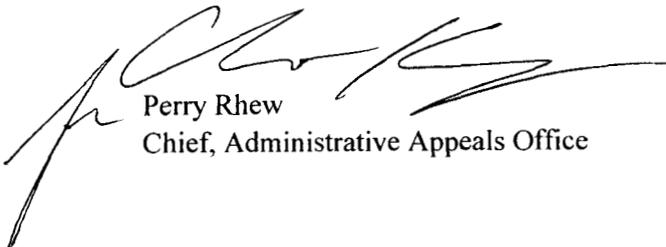
ON BEHALF OF APPLICANT:



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.

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, New York, New York, and came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the matter to the director with instructions to issue a new decision which, if adverse to the applicant, shall be certified to the AAO. The director issued a new decision on September 14, 2009, and certified it to the AAO for review. The director's decision will be withdrawn. The appeal will be dismissed, and the application will be denied.

The record reflects that the applicant was born on December 28, 2000 in Senegal. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's father has been a U.S. citizen since his naturalization on June 6, 1996. The applicant was admitted to the United States as a lawful permanent resident on May 5, 2008, when he was seven years old. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship through his U.S. citizen father.

The district director concluded, in relevant part, that the applicant did not acquire U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because he was not legitimated by his father, under either the laws of the State of New York or the laws of Senegal. The applicant appealed, and the matter was remanded by the AAO for consideration under section 309 of the Act, 8 U.S.C. § 1409. On remand, the director again denied the applicant's claim finding that section 309 of the Act requires that the applicant establish that he was legitimated. The director's decision was certified to the AAO. The AAO granted applicant's counsel an extension of time in which to submit a brief or statement until November 22, 2009. To date, the AAO has not received any brief or additional statement from counsel or the applicant.

Section 309 of the Act, 8 U.S.C. § 1409, states 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.

The plain language of section 309(a)(4) of the Act, 8 U.S.C. § 1409(a)(4), states that an applicant must establish that he was either (A) legitimated, (B) acknowledged by the father, or (C) that his paternity was adjudicated by a court. The entire subsection (a)(4) is written in the alternative and not, as the director finds, only subsections (B) and (C).

In its June 2, 2009 decision, incorporated here by reference, the AAO found that the applicant was not legitimated under New York law because his biological parents did not marry each other. *See Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation); *see also Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) (same). The AAO agrees with the director that the information provided by the applicant regarding Senegalese law suggests also that he was not legitimated under the law of Senegal.

Nevertheless, as the AAO stated in its previous decision, the question remains whether the listing of the applicant's father's name in the applicant's birth certificate is sufficient to establish that his paternity was acknowledged in writing under oath as is required under section 309(a)(4)(B) of the Act, 8 U.S.C. § 1409(a)(4)(B). The AAO finds that the birth certificate does not constitute an acknowledgement of paternity by the applicant's father. In this regard, the AAO notes that the registrant appears to have been the applicant's paternal uncle and not his father. Additionally, it does not appear that the statements made in the birth certificate were made under oath. The AAO thus finds that the applicant has failed to fulfill the requirements of section 309(a)(4) of the Act.

The AAO further finds that the applicant has not established that his father has agreed in writing to provide for his financial support until he reaches the age of 18 years as required by section 309(a)(3) of the Act, 8 U.S.C. § 1409(a)(3).

The AAO notes that the applicant has been aware of the deficiencies in his application and has had multiple opportunities to provide the documentation necessary to establish his eligibility for citizenship under section 309(a) of the Act.¹

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"

¹ The AAO notes that the applicant is only nine years old. His father therefore still has the opportunity to agree to financially support him, and to acknowledge him, in accordance with the requirements of section 309(a)(3) and (4) of the Act. Should he do so, the applicant may again pursue his citizenship claim by filing a motion to reopen in accordance with 8 C.F.R. §§ 103.5 and 341.6.

or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has not met his burden and the appeal will be dismissed. The application is denied.

ORDER: The director’s September 14, 2009 decision is withdrawn. The appeal is dismissed. The application is denied.