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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: NEWARK, NJ

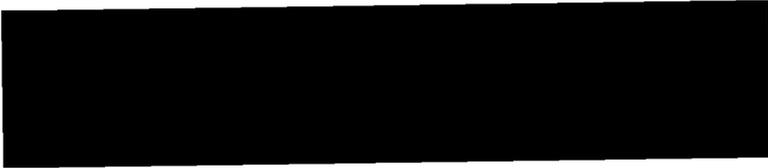
Date: MAR 30 2010

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 Field Office Director, Newark, New Jersey, 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 January 5, 1980 in the Philippines. The applicant was born out of wedlock to [REDACTED] and [REDACTED]. The applicant's father is a native-born U.S. citizen. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father pursuant to section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a).

The field office director concluded that the applicant had failed to fulfill the requirements of sections 309(a)(3) and (4) of the Act, 8 U.S.C. §§ 1409(a)(3) and (4). Specifically, the director noted that the applicant failed to establish that he was legitimated or that his father's written acknowledgement of paternity was submitted to any court.

On appeal, the applicant, through counsel, maintains that he has fulfilled all the requirements of section 309(a) of the Act. *See Applicant's Appeal Statement.*

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 in writing under oath, or (C) that his paternity was adjudicated by a court. Section 309(a)(3) of the Act, in

turn, requires that the applicant establish that his father agreed in writing to provide him with financial support.

The record contains a document, dated in 1984, entitled "Affidavit of Admission of Paternity" where the applicant's father acknowledges, under oath and in writing, the applicant's paternity and pledges to provide financial support to the applicant until his 18th birthday. The AAO finds that this document serves to fulfill both the requirements of section 309(a)(3) and (a)(4)(B) of the Act.

The AAO further finds that the applicant has submitted sufficient evidence to establish that his father had the required physical presence in the United States pursuant to section 301 of the Act, 8 U.S.C. § 1401.¹ See e.g. Applicant's Father's Military Records.

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 applicant in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.

¹ Section 301(g) of the Act, 8 U.S.C. § 1401(g) (1980), provided 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.