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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: SAN FRANCISCO, CALIFORNIA Date:

MAY 18 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under 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:

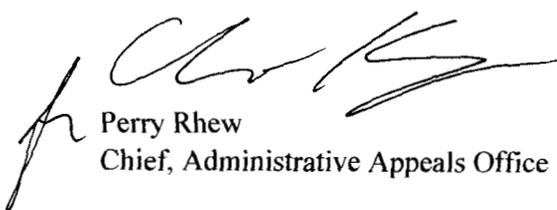
SELF-REPRESENTED

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 Francisco, California, 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 Japan on December 28, 1980. His father, [REDACTED] was born in the United States on December 16, 1943, and his mother is a native and citizen of Japan. The applicant's parents were not married at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to 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 that he was legitimated by his father before his 21st birthday, and denied the application accordingly. *See Decision of the Director*, dated June 17, 2009. On appeal, the applicant contends that he has provided evidence of "de facto paternal acknowledgement" before his eighteenth birthday. *See Form I-290B, Notice of Appeal*, dated July 11, 2009.

Section 301(g) of the Act provides the pertinent conditions for acquisition of citizenship for a person born outside of the United States to parents, one of whom is a U.S. citizen and the other of whom is not. Because the applicant was born out of wedlock, the derivative citizenship provisions set forth in section 309 of the Act also apply to this case.¹ Section 309(a) of the Act, 8 U.S.C. § 1409(a), provides, in pertinent part:

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—

¹ Former section 309(a) of the Act, which required that paternity be established by legitimation before a child turned 21, is inapplicable to this case because it 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).

(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.

To constitute legitimation in Japan, "there must be the subsequent marriage of the parents, acknowledgment of parentage, and entry into the official family register." *Matter of Monma*, 12 I&N Dec. 265, 266 (BIA 1967) (recording of child's name in the same family register as that of the father does not constitute legitimation in Japan).

The applicant claims that he lived with his parents and two brothers in Japan until 1988, when his father departed. The record contains a copy of a post card sent by the applicant's father to his mother in 1988, referring to the applicant and his brothers as his sons. Additionally, the applicant's father's name was entered into the official family register on June 17, 2008, when the applicant was 27 years old. Because there has been no subsequent marriage of the applicant's parents, these actions do not constitute legitimation under Japanese law. *Id.* Further, the record contains no evidence that the applicant's father agreed in writing to provide financial support to the applicant until he turned 18, or that while the applicant was under the age of 18 years, his father acknowledged him in writing under oath, or that paternity was established by adjudication of a competent court. Accordingly, the applicant has not satisfied the requirements set forth in section 309(a)(3) and (4) of the Act.

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 not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under sections 309(a) and 301(g) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.