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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: DENVER, COLORADO Date: NOV 15 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401, 1409 (1955)

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Denver, Colorado, 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 Germany on [REDACTED] 1955, to [REDACTED]. The applicant claims that her birth father is [REDACTED] who is not listed on the original birth certificate in the record. The applicant's birth parents never married. Mr. [REDACTED] was a U.S. citizen based on his birth in Puerto Rico on [REDACTED] 1924. The applicant's mother was born in Germany and was not a U.S. citizen at the time of the applicant's birth. The applicant was adopted by U.S. citizen parents on January 18, 1963, and she became a U.S. citizen by naturalization on November 19, 1965. 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 she acquired U.S. citizenship at birth through her biological father.

The director denied the application finding that the applicant failed to demonstrate that: (1) her paternity was established by legitimation before she turned 21, as required by former section 309(a) of the Act, 8 U.S.C. § 1409(a); and (2) her father met the physical presence requirements set forth in former section 301(a)(7) of the Act. On appeal, the applicant contends that her father met the applicable physical presence requirements, and that the documents in the record establish her relationship to her birth father.

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 1955. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.¹

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, she must satisfy the provisions set forth in former section 309(a) of the Act.² Former section 309(a) of the Act provided, in pertinent part:

¹ 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.

² 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

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 her father was physically present in the United States for no less than ten years before her birth on [REDACTED] 1955, and that at least five of these years were after her father's fourteenth birthday on [REDACTED] 1938. Additionally, the applicant must establish that her paternity was established by legitimation before her twenty-first birthday on [REDACTED] 1976.

Here, the record supports the applicant's claim that [REDACTED] was born in Puerto Rico on [REDACTED] 1924, and that he met the physical presence requirements set forth in the Act. *See Birth Certificate for [REDACTED] Death Certificate for [REDACTED] U.S. Military Records for [REDACTED]*

Regarding paternity and legitimation, the applicant claims that the evidence in the record shows that she is the biological child of U.S. citizen [REDACTED]. In support of this contention, the applicant submitted, among other things, the following: a photocopy of a German birth certificate for [REDACTED] dated May 8, 1961, and listing both of the applicant's parents; correspondence between the applicant and a German social services agency from 2008; a letter to the applicant from Interpol Puerto Rico, dated Mar. 7, 2007; various photographs; copies of correspondence between the applicant's mother and Mr. [REDACTED] documents related to the applicant's adoption; and military records and identification cards for Mr. [REDACTED].

Under Puerto Rican law, a child born out of wedlock becomes the legitimate child of the father if paternity has been established. *See Matter of Bautista*, 17 I&N Dec. 122, 123-24 (BIA 1979). Acknowledgment by the father is one method of establishing paternity in Puerto Rico. *Id.* (holding that paternity was established by legitimation where father acknowledged his children a few days after their birth, the father executed an acknowledgment before a notary public, and he had legal custody of the children). Voluntary acknowledgement of paternity may take place in a public document such as a birth certificate or will, or through an affidavit. *Petition for Naturalization of Fraga*, 429 F. Supp. 549, 551-52 (D.P.R. 1974) (holding that son was legitimated by his father though acknowledgment in birth certificate and affidavit).

Here, the documents in the record do not show that the applicant's father made a voluntary acknowledgment of paternity. Specifically, the applicant confirms that Mr. [REDACTED] name is not listed on her original birth certificate. *See Letter from [REDACTED] dated July 7, 2009; see also Birth Certificate of [REDACTED] dated May 8, 1961.* That the applicant was able to obtain a new birth certificate that includes her father's name does not show that Mr. [REDACTED]

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).*

voluntarily acknowledged the applicant. Further, none of the remaining documents in the record contain an acknowledgement from Mr. [REDACTED] that he is the father of the applicant. Accordingly, the applicant has not shown by a preponderance of the evidence that she was legitimated under the laws of Puerto Rico before her twenty-first birthday.

Similarly, the applicant has not demonstrated that her paternity was established by legitimation under the laws of Germany. *See Matter of Lauer*, 12 I&N Dec. 210, 210-11 (BIA 1967) (finding that legitimation under German law requires marriage of the birth parents or a state or court declaration of legitimacy).

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 she 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.

ORDER: The appeal is dismissed.