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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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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: OCT 06 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 (1969)

ON BEHALF OF PETITIONER:

[redacted]

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, Miami, Florida, 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 Jamaica on April 9, 1969, to [redacted] and [redacted] The applicant's father is not listed on her birth certificate, and her parents never married. The applicant's father is a U.S. citizen based on his birth in New York on April 17, 1944. The applicant's mother was born in Grenada and is not a U.S. citizen. 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 father.

The applicant filed her first Application for Citizenship (Form N-600) in 2003. *See Form N-600*, filed Dec. 31, 2003. The director determined that the applicant failed to demonstrate that her paternity was established by legitimation as required by section 309(a) of the Act, 8 U.S.C. § 1409(a), and denied the application accordingly. *See Decision of the District Director*, dated Mar. 10, 2005. The AAO dismissed a subsequent appeal finding that the applicant did not establish that she was legitimated by her father while she was under the age of 21. *See Decision of the AAO*, dated Dec. 6, 2006. The applicant filed a second Form N-600 in 2007. *See Form N-600*, filed Jan. 19, 2007. The director denied the second application finding that the applicant failed to provide any new evidence to show that she met the legitimation requirements set forth in section 309(a) of the Act.[1] *See Decision of the Field Office Director*, dated May 7, 2009. On appeal, the applicant contends through counsel that her paternity was established by legitimation under the laws of Canada. *See Form I-290B, Notice of Appeal*, filed June 4, 2009; *Letter in Support of Appeal*, dated June 18, 2009.

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 1969. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.[2]

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

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[1] Because the instant application is the applicant's second Form N-600, the director should have rejected the application and instructed the applicant to submit a motion to reopen or reconsider pursuant to 8 C.F.R. § 341.6. For purposes of administrative efficiency, however, the AAO will adjudicate this pending appeal.

[2] 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.

> 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 legitimation provisions set forth in section 309(a) of the Act. Although section 309(a) was amended in 1986, the applicant may elect to have the pre-amendment version of section 309(a) apply to her because she was between the ages of 15 and 18 on 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).

Former section 309(a) of the Act provided, in pertinent part:

> 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 paternity was established by legitimation before her twenty-first birthday on April 9, 1990. Additionally, the applicant must establish that her father was physically present in the United States for no less than ten years before her birth on April 9, 1969, and that at least five of these years were after her father's fourteenth birthday on April 17, 1958.

The applicant contends that she has satisfied the legitimation requirements under former section 309(a) of the Act because her paternity was established by legitimation under the laws of Canada. *See Letter in Support of Appeal.* Specifically, the applicant claims that a Canadian court recognized [redacted] as her father when she was adopted in 1978. *See Order to Dispense With Consent Other Than the Consent of the Child to be Adopted*, dated Jan. 25, 1978. Additionally, the applicant claims that her paternity has been established through a DNA test which determined a 99.9998% probability of paternity. *See DNA Parentage Test Report*, dated Feb. 13, 2003.

Here, the applicant has not established that her paternity was established by legitimation under Canadian law. Although the province of Ontario, where the applicant was adopted, eliminated the legal distinctions between children born in and out of wedlock with the passage of the Children's Law Reform Act of 1979, the applicant cannot qualify as the legitimated child of [redacted] unless the record establishes that she is [redacted] biological child. *See Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001) (en banc) (stating that the inherent prerequisite to legitimation is a biological, parent-child relationship); *see also Matter of Bueno*, 21 I&N Dec. 1029, 1032 (BIA 1997) (stating the requirement that a "legitimated child is [firstly] the biological offspring of unmarried parents."). The record shows that the applicant was adopted by [redacted] and [redacted] in Ontario, Canada, on January 25, 1978. *See Adoption Order.* As part of the adoption proceeding, the applicant's adoptive parents applied for an "order dispensing with the consent of [redacted], the natural father of the child." *See Order to Dispense With Consent Other Than the Consent of the Child to be Adopted.* The court, "upon reading the affidavit of" the applicant's

adoptive parents, "ordered that the consent of [redacted] to the adoption of the child be . . . dispensed with." *Id.* The court's order, however, does not include a finding that [redacted] is the applicant's biological father. *Id.* Further, the DNA Report in the record indicates that genetic testing was conducted in February, 2003, when the applicant was 33 years old. *See DNA Parentage Test Report.* Accordingly, the DNA Report cannot establish that the applicant's paternity was established by legitimation before her twenty-first birthday as required by former section 309(a) of the Act.

Finally, although the applicant has submitted a copy of her Jamaican baptism certificate, which references both of her birth parents, the applicant has not established that her paternity was established by legitimation under the laws of Jamaica. *See Matter of Hines*, 24 I&N Dec. 544, 548 (BIA 2008) (holding that the only way to legitimize children in Jamaica is through marriage of the birth parents).

Because the applicant has not demonstrated that her paternity was established by legitimation before she turned 21, no purpose would be served in evaluating whether the applicant's father met the physical presence requirements set forth in former section 301(a)(7) of the Act. *See* former section 309(a) of the Act (stating that former section 301(a)(7) of the Act only applied to children born out of wedlock if they met the legitimation requirements).

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.