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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  
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Services

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FILE: [REDACTED] Office: LOS ANGELES, CA

Date:

OCT 26 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship

ON BEHALF OF APPLICANT:

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on [REDACTED] in the Philippines. The applicant's parents, [REDACTED] and [REDACTED] were not married to each other. The applicant's father was born in the Philippines in 1970, but acquired U.S. citizenship upon his parents' naturalization in 1985. The applicant's father passed away in 2005. The applicant, through his paternal grandmother, seeks a certificate of citizenship claiming that he acquired U.S. citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director denied the applicant's citizenship claim upon finding that the applicant was not legitimated and therefore did not fall within the definition of "child" in section 101(c) of the Act, 8 U.S.C. § 1101(c). The application was accordingly denied.

On appeal, the applicant, through counsel, states that the applicant acquired U.S. citizenship at birth pursuant to section 309(a) of the Act, 8 U.S.C. § 1409. See Appeal Brief at 3-4.

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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 2003. Because the applicant was born out of wedlock and because his applicant's father was a U.S. citizen at the time of his birth, sections 301 and 309 of the Act, 8 U.S.C. §§ 1401 and 1409, as amended, apply to this case.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

Section 301(g) of the Act provides, in pertinent part, 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 five years, at least two of which were after attaining the age of fourteen years . . .

Section 309(a) of the Act, as amended, provides, in relevant part:

(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.

Section 322(a) of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides, in relevant part,

A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
  - (A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
  - (B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
- (3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The AAO notes that the applicant, through his grandmother, submitted a Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322. As noted above, the applicable law in this case is sections 301 and 309 of the Act, and not section 322. There is ample evidence in the record to establish that the applicant's father had the required physical presence in the United States prior to the applicant's birth. The AAO notes further that the applicant has established that his father acknowledged his paternity. The matter must be remanded to the director to request that a Form N-600, Application for Certificate of Citizenship, be submitted and for consideration of the applicant's citizenship claim under sections 301 and 309 of the Act. The director shall issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision and issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.