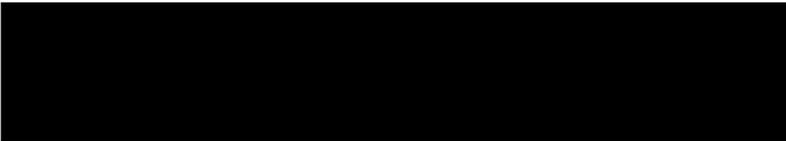


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



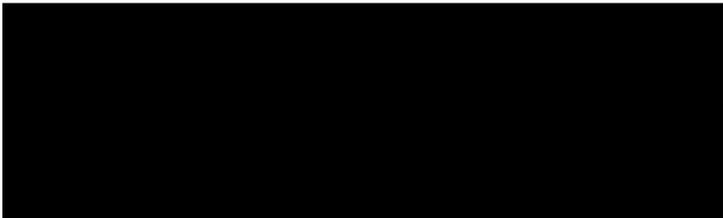
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FILE:  Office: NEW YORK, NEW YORK Date: **FEB 10 2011**

IN RE: 

APPLICATION: Application for Certificate of Citizenship under sections 201 and 205 of the Nationality Act of 1940, 8 U.S.C. §§ 601, 605 (1951)

ON BEHALF OF PETITIONER:

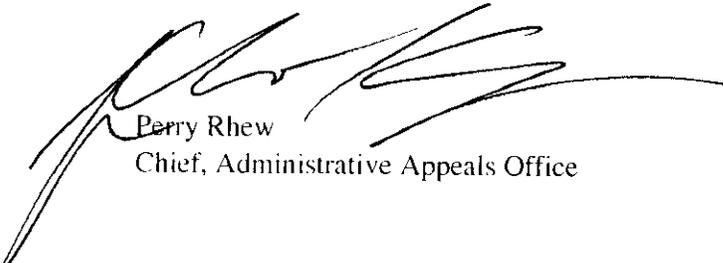


INSTRUCTIONS:

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 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 Form N-600 application was denied by the District Director, New York, New York, 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 the Dominican Republic on September 4, 1951, to unmarried parents [REDACTED] and [REDACTED]. The applicant's father is a U.S. citizen based on his birth abroad to a U.S. citizen parent. The applicant claims that his mother also was a U.S. citizen based on her birth abroad to a U.S. citizen parent. The applicant's parents married on October 6, 1973, when the applicant was 22 years old. The applicant was admitted to the United States as a lawful permanent resident on May 26, 1982. The applicant seeks a certificate of citizenship under sections 201 and 205 of the Nationality Act of 1940 ("the 1940 Act"), 8 U.S.C. §§ 601, 605 (1951) based on the claim that he acquired U.S. citizenship at birth through his parents.

The director determined that the applicant did not automatically acquire U.S. citizenship from his parents because, among other things, his paternity was not established by legitimation before his twenty-first birthday. *See Decision of the Director*, dated Sept. 14, 2010. The application was denied accordingly. *Id.* On appeal, the applicant contends through his representative that he meets the requirements for a Certificate of Citizenship under sections 201 and 205 of the 1940 Act. *See Form I-290B, Notice of Appeal*, filed Oct. 14, 2010; *Brief in Support of Appeal*.

The applicable law for transmitting citizenship to a child born abroad to 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 1951. Accordingly, section 201(c) of the 1940 Act controls his claim to acquired citizenship.

Section 201(c) of the 1940 Act stated that the following shall be nationals and citizens of the United States at birth:

A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one if its outlying possessions prior to the birth of such person[.]

Additionally, because the applicant was born out of wedlock, he must satisfy the provisions set forth in section 205 of the 1940 Act. This section provided that section 201(c) would apply to a child born out of wedlock if "the paternity is established during minority, by legitimation, or adjudication of a competent court." Alternatively,

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

Id. The term “minor” was defined as a person under 21 years of age. Section 101(g) of the 1940 Act. Accordingly, the applicant must first establish that his paternity was established by legitimation or adjudication of a competent court before his twenty-first birthday on September 4, 1972,¹ or that his mother was a U.S. citizen who had resided in the United States before his birth.

Here, the applicant contends that his paternity was established by legitimation under New York law. *See Brief on Appeal* at 2-4. Specifically, the applicant claims that pursuant to section 4-1.2(a)(2)(C) of the New York Estates, Powers and Trusts Law, an applicant may be legitimated if paternity is established by evidence that the father has openly and notoriously acknowledged the child as his own. *Id.* at 2. However, the Board of Immigration Appeals (Board) has held that marriage of the biological parents is required for legitimation under New York law. *See Matter of Patrick*, 19 I&N Dec. 726, 728 (BIA 1988) (citing *Matter of Bullen*, 16 I&N Dec. 378 (BIA 1977) and *Matter of Archer*, 10 I&N Dec. 92 (BIA 1962)).² The record reflects that the applicant’s parents married on October 6, 1973. However, the applicant does not meet the requirements of section 205 of the 1940 Act because the applicant was over 21 at the time of the marriage.

The applicant also has not established paternity by legitimation under the law of the Dominican Republic. *See Matter of Martinez-Gonzalez*, 21 I&N Dec. 1035, 1038-39 (BIA 1997). Finally, the applicant does not contend that his paternity was established during his minority by adjudication of a competent court in New York or the Dominican Republic. *See* section 205 of the 1940 Act. Accordingly, the applicant has not satisfied the paternity requirements set forth in the 1940 Act.

Although the applicant claims that his mother was a U.S. citizen based on her birth abroad to a U.S. citizen parent, he does not claim that she previously resided in the United States or one of its outlying possessions before his birth. Accordingly, the applicant has not satisfied the requirement for out-of-wedlock children of U.S. citizen mothers in the second clause of section 205 of the 1940 Act.

Because the applicant has not satisfied the requirements for out-of-wedlock children in section 205 of the 1940 Act, he necessarily cannot satisfy the requirements in section 201(c) of the 1940 Act. *See* section 205 of the 1940 Act.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R.

¹ Although the director erred in citing to the provisions governing children born out-of-wedlock in section 309 of the Immigration and Nationality Act, this error is harmless because: (1) both provisions indicate that the applicant must establish paternity before turning 21; (2) the applicant does not contend that paternity was established by adjudication of a competent court, the alternative method of establishing paternity contained in section 205 of the 1940 Act; and (3) the issue of paternity by legitimation was fully briefed by the applicant’s representative.

² Although the applicant notes that the AAO relied on the New York Estates, Powers and Trusts Law to find legitimation in a proceeding in 2005, that decision was unpublished and not designated as precedent. Rather, the AAO is bound by the Board’s precedent decision in *Matter of Patrick*, 19 I&N Dec. at 728. *See* 8 C.F.R. § 1003.1(g).

§ 341.2(c). Here, the applicant has not met his burden. Accordingly, the applicant is not eligible for citizenship as an out-of-wedlock child under sections 205 and 201 of the 1940 Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.