

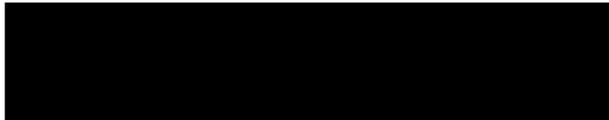
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: Office: INDIANAPOLIS, IN FILE:

JUL 21 2011

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309 of the
Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409

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.

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 \$630. 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, Indianapolis, Indiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 7, 1993 in Costa Rica. The applicant's birth certificate lists her parents as [REDACTED]. The applicant claims that her biological father is [REDACTED] who is a native-born U.S. citizen, and the same person as [REDACTED]. The applicant was adopted by her paternal grandparents in 1997. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her biological father.

The field office director denied the applicant's citizenship claim upon finding that the applicant's biological father gave up his parental rights, including the right to transmit citizenship, upon the applicant's adoption. The director further noted that the applicant is not a lawful permanent resident and therefore ineligible to derive U.S. citizenship through her adoptive parents.

On appeal, the applicant, through counsel, states that the applicant acquired U.S. citizenship at birth through her biological father, [REDACTED]. See Brief in Support of Appeal. She maintains that [REDACTED] used the name [REDACTED] as an alias because he was a fugitive. *Id.* She notes that the record contains DNA evidence establishing the applicant's biological relationship to [REDACTED]. *Id.*

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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1993. Section 301(g) of the Act, 8 U.S.C. § 1401(g) (1972), therefore applies to the present case.

Section 301(g) of the Act states, 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

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.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her case.¹

Section 309(a) of the Act states, 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.

The applicant has not met the conditions of section 309(a) of the Act, as amended. The results of DNA testing in the record provide clear and convincing evidence of the blood relationship between the applicant and [REDACTED]. The record also establishes the applicant's father's U.S. citizenship. The applicant's father acknowledged his paternity under oath by submitting an Affidavit of Parentage, Physical Presence and Support to a U.S. consular official in South Korea in 2010. Nevertheless, Part II of the Affidavit, relating to providing financial support, is unsigned. There is no evidence in the record that the applicant's father agreed in writing to financially support

¹ Prior to November 14, 1986, former section 309 of the Act required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The applicant was born in 1993. Therefore, section 309(a) of the Act, as amended, is applicable to her case.

the applicant until her eighteenth birthday. The applicant therefore cannot fulfill the requirements of section 309(a)(3) of the Act, and did not acquire U.S. citizenship at birth through her father.

Having determined that the applicant cannot establish that she fulfilled the requirement of section 309(a)(3) of the Act, the AAO need not address the questions of the applicant's father's identity, physical presence, legitimation, or status as a biological parent in light of the applicant's adoption.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet her burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.