

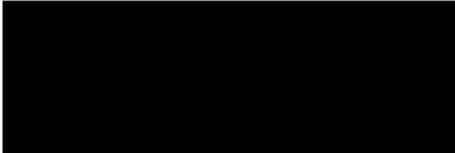
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: MIAMI, FL

Date:

MAR 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.

Thank you,

Jerry 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 sustained.

The record reflects that the applicant was born on August 28, 2006 in the Czech Republic. Her parents, [REDACTED] were married in 2008. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that the applicant had not been admitted to the United States as a lawful permanent resident as is required by section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

On appeal, the applicant, through counsel, states that she is eligible for citizenship under sections 301(g) and 309(a) of the Act. *See Applicant's Appeal Brief.*

The AAO reviews these proceedings *de novo*. *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. 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 2006. Section 301(g) of the Act, as amended by the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, 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

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her case. Section 309(a) of the Act, as amended by the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), 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 must thus establish that she has fulfilled the requirements of sections 301(g) and 309(a) of the Act. The applicant has 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 her father. The record also establishes the applicant's father's U.S. citizenship and his legitimation of the applicant. The applicant's biological parents were married in Michigan in 2008, and the applicant has been residing with them since. *See Matter of Cortez*, 16 I & N Dec. 289 (BIA 1977) (holding that an out of wedlock child is legitimated under Michigan law by the subsequent marriage of the child's biological parents); see also 7 FAM 1133.4-1, Appendix A.

The applicant has also established that her father was physically present in the United States for 5 years prior to 2006, two of which were after the age of 14 (after 1976) as required under former section 301(a)(7) of the Act. In this regard, the record contains the applicant's father's social security statement indicating his continuous employment in the United States for over 12 years, as well as ample evidence of the applicant's father's presence in the United States prior to her birth, including: her father's school records indicating his school attendance in the United States in the 1950s, the affidavit of Hortencia de Luna (the former wife of the applicant's father) listing his U.S. residences in the 1960s, the applicant's father's marriage certificate indicating his marriage in Texas in 1961, and the applicant's father's divorce decree stating, in part, the locations and dates of birth of his other children who were born in the United States.

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 met her burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained.