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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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Date: **SEP 15 2011** Office: NEW YORK, NY

FILE:

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 (1991).

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 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 on October 7, 1991 in the Dominican Republic. The applicant's parents are [REDACTED]. The applicant's father was born in the United States on June 27, 1969. The applicant's parents were married to each other on August 6, 1992. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's citizenship claim upon finding that he had failed to establish that his father had agreed in writing to provide for his financial support as is required by section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, as amended. The director further found that the applicant had failed to establish that his father had the physical presence required in the United States in order to transmit U.S. citizenship under section 301 of the Act, 8 U.S.C. § 1401. Finally, the director noted that the applicant did not automatically acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431.

On appeal, the applicant, through counsel, maintains that the written agreement to provide financial support may be executed after the applicant's eighteenth birthday. *See* Appeal Brief at 4. Alternatively, counsel argues that the applicant's parents' marriage subsequent to the applicant's birth and his legitimation constitutes a *de facto* agreement to provide financial support. *Id.* at 5. Lastly, counsel indicates that the applicant's father's high school transcript is evidence of his physical presence in the United States. *Id.* at 6.

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 1991. Section 301(g) of the Act is therefore applicable to his case.

Section 301(g) of the Act provides, in relevant 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

The record reflects that the applicant was born out of wedlock. *See* Marriage Certificate of Applicant's Parents. Section 301(g) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the conditions specified in section 309(a) of the Act, 8 U.S.C. § 1409(a).

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 record establishes that the applicant was legitimated by his father as a result of his parents' marriage and birth registration. *See Matter of Martinez*, 21 I&N Dec. 1035 (BIA 1997). The applicant's father was born in New York on June 27, 1969. At issue in this case is whether the applicant's father agreed in writing to provide financial support for the applicant until his eighteenth birthday.

The applicant's father indicates in an affidavit, dated November 2, 2010, that he has financially supported the applicant. However, there is no contemporaneous document in the record whereby the applicant's father agreed in writing to financially provide for the applicant prior to his eighteenth birthday as is required by section 309(a)(3) of the Act. *See* 7 FAM 1133.4-2. The AAO finds counsel's argument regarding the U.S. Department of State interpretation to be unpersuasive. There is no legal support for counsel's argument that a written agreement to provide financial support can be executed after a child's eighteenth birthday or that the parents' marriage or child's legitimation are proof of an agreement to financially support a child. The plain language of the statute requires that the child's father, unless deceased, agree in writing to provide financial support until the child's eighteenth birthday. The applicant's father in this case did not execute such a written agreement prior to the applicant's 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 his father.

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 not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.