



U.S. Citizenship
and Immigration
Services

E2

[REDACTED]

Date: **OCT 16 2012**

Office: OAKLAND PARK, FL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

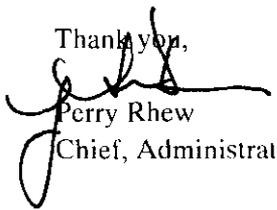
APPLICATION: Application for Certificate of Citizenship

ON BEHALF OF APPLICANT:

[REDACTED]

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 Acting Field Office Director, Oakland Park, Florida, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on May 19, 1947 in Germany. The applicant was born out of wedlock. His [REDACTED] was born in West Virginia on May 30, 1917. The applicant's [REDACTED] is a native and citizen of Germany. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his biological father.

The acting field office director denied the applicant's citizenship claim upon finding that he had failed to demonstrate that he was legitimated by his father prior to his eighteenth birthday under the law of his, or his father's, domicile.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth pursuant to a special provision in the Nationality Act of 1940 (the Nationality Act) applicable to out of wedlock children of World War II veterans.

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).

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Immigration and Nationality Act (the Act) apply to his case. Section 309(b) of the Act, 8 U.S.C. § 1409(b), as enacted in 1952, provided, in relevant part:

(b) ... the provisions of section 310(a)(7) shall apply to a child born out-of-wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), provided, in turn,

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 ten years, at least five of which were after attaining the age of fourteen years

...

The AAO notes that the Act of July 31, 1946, Pub. L. 79-571, 60 Stat. 721 amended section 201 of the Nationality Act of 1940, 8 U.S.C. § 601 to include a specific provision for children of U.S.

citizens who served in the U.S. Armed Forces during World War II. That provision, section 201(i) of the Nationality Act, 8 U.S.C. § 601(i), provided that:

A person born outside the United States . . . of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of termination of hostilities in the present war . . . and who, prior to the birth of such person, has had ten years' residence in the United States . . . at least five of which were after attaining the age of twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, this child must reside in the United States . . . for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.¹

As the director only considered the applicant's eligibility for U.S. citizenship under section 309 of the Act, her decision must be withdrawn and the matter remanded for entry of a new decision. Upon remand, the director must consider the applicant's claim under section 201(i) of the Nationality Act and determine the applicability of section 324(d) of the Act, 8 U.S.C. § 1435(d). The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

¹ Although this provision does not explicitly require that the applicant establish that he was legitimated, it includes a retention requirement. The Act now provides that "[p]ersons who were subject to [retention requirements] and reached age 26 before October 10, 1978, without entering the United States . . . lost their citizenship on their 26th birthday." See 7 FAM 1133.5-13(a) and (c).