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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

Ez



Date: **SEP 27 2012**

Office: HIALEAH, FL

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g) (1992).

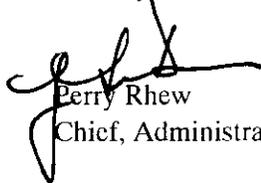
ON BEHALF OF APPLICANT:



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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Hialeah, Florida, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was mistakenly rejected as untimely filed. The matter will be reopened *sua sponte* and remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on October 2, 1992 in the Dominican Republic. The applicant's parents are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's father was born in Puerto Rico on [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization in 2001. 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 she had failed to establish that her father had the required physical presence in the United States to transmit U.S. citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g) (1992).

On appeal, the applicant maintained that her father was physically present in the United States as required. In support of the appeal, the applicant submitted, in relevant part, copies of her father's social security earnings statement evidencing his employment in the United States.

The appeal was mistakenly rejected as untimely filed. The matter is reopened *sua sponte* based upon evidence of its timely filing. The matter must be remanded to the director for consideration of the applicant's eligibility under section 309(a) of the Act, 8 U.S.C. § 1409(a).

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 1992. Section 301(g) of the Act is therefore applicable 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 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.

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 does not contain evidence to establish the blood relationship between the applicant and her father. The applicant's birth certificate indicates that she was recognized by her father, but there is no evidence in the record that he agreed in writing to provide financial support as required by section 309(a)(3) of the Act. The matter must be remanded to the director to consider the applicant's eligibility under section 309(a) of the Act and request evidence of the applicant's blood relationship with her father and her father's agreement regarding financial support. Should the applicant be found eligible under section 309(a) of the act, the director shall consider the recently submitted social security records along with previously submitted evidence of the applicant's father's physical presence in the United States to determine the applicant's eligibility under section 301(g) of the Act. The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision.