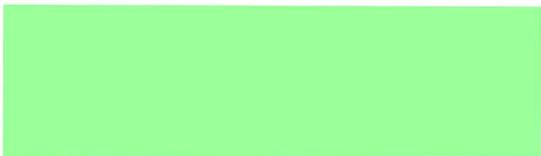


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



Date: **AUG 06 2013** Office: MIAMI, FL

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for a Certificate of Citizenship under Sections 301(g) and 309(a) of the Act, 8 U.S.C. §§ 1401(g) and 1409(a) (1991).

ON BEHALF OF APPLICANT:

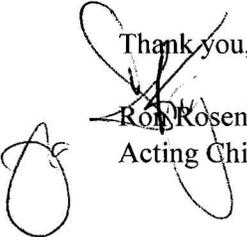
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 28, 1991 in Jamaica. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's father was born in [REDACTED], [REDACTED]. The applicant's parents were never married to each other. The applicant presently seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

The field office director determined that the applicant did not acquire U.S. citizenship under sections 301, 309, or 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401, 1409 or 1431. The field office director found that the applicant failed to establish that her father was physically present in the United States prior to her birth for the statutorily required period of time. The application was accordingly denied.

On appeal, the applicant maintains, in relevant part, that she has provided sufficient evidence of her father's physical presence in the United States. See Applicant's Letter Accompanying Appeal.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1991. Section 301(g) of the Act, 8 U.S.C. § 1401, is therefore applicable to her 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 applicant states that her parents were never married to each other. She was therefore born out of wedlock. 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 applicant must thus establish, at the outset, that she fulfills the requirements of section 309(a) of the Act. The record does not contain clear and convincing evidence, such as DNA test results, of a blood relationship between the applicant and [REDACTED]. Additionally, there is no evidence that the applicant's father "agreed in writing" to provide for her financial support until her eighteenth birthday. There is also no evidence that the applicant was legitimated under the laws of Jamaica. In this regard, the AAO notes that legitimation in Jamaica is accomplished by the marriage of the natural parents. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). Marriage of the natural parents is also required for legitimation in the State of Florida. *See Florida Statutes §742.091*. Similarly, New York State law provides that the parents of a child born out of wedlock must marry one another in order for the child to become legitimated. *See New York Domestic Relations Law, Section 24; see also, Matter of Espinoza*, 17 I&N Dec. 522 (BIA 1980) (discussing legitimation requirements under New York law.) Because the applicant's parents never married each other, the applicant was legitimated under the law of her or her father's residence or domicile. Thus, she cannot establish that she acquired U.S. citizenship at birth through her father.

The AAO further notes that because, in relevant part, the applicant has not been admitted to the United States as a lawful permanent resident, she did not acquire U.S. citizenship under section 320 of the Act, or any other provision of law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.