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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 18 2014 Office: PHILADELPHIA, PA FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under former Sections 301 and 309(a) of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409 (1966).

ON BEHALF OF APPLICANT:

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
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Philadelphia, Pennsylvania Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born in Jamaica on The applicant claims that her father is a U.S. citizen born in the U.S. Virgin Islands. The applicant's mother, is not a U.S. citizen. The applicant's parents never married. The applicant states that she was abandoned by her mother, and raised by her father in New York. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The director determined that the applicant failed to demonstrate that was her biological father, that he was a U.S. citizen, or that she was legitimated as required by former section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a). The director also found that the applicant had failed to establish that her father had been physically present in the United States prior to her birth as required by former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

On appeal, the applicant, through counsel, maintains that she submitted sufficient evidence of her biological relationship to her father, of his legitimation based on his "open and notorious acknowledgment of paternity," his U.S. citizenship and his physical presence in the United States. *See* Appeal Brief at 2-5.

Applicable Law

We review 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 1966. Former section 301(a)(7) of the Act, as in effect in 1966, is therefore applicable to this case.[1]

Former section 301(a)(7) of the Act provided, 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

[1] The Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, re-designated former section 301(a)(7) of the Act as section 301(g). The substantive requirements of the provision, however, remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

> less than ten years, at least five of which were after attaining the age of fourteen years . . . .

Because the applicant was born out of wedlock, section 301(a)(7) of the act, *supra*, is applicable to her case only upon fulfillment of the conditions specified in former section 309(a) of the Act.[2] Former section 309 of the Act required that a father's paternity be established by legitimation while the child was under 21.

The applicant was born in 1966 in Jamaica. Jamaican legitimation laws have been discussed in three Board decisions; In *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981) (regarding legitimation in the context of visa preference allocation); *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) (regarding legitimation in the context of derivative citizenship pursuant to former section 321(a)(3) of the Act, 8 U.S.C. § 1432 (repealed)); and *Matter of Pagan*, 22 I&N Dec. 547 (BIA 1999). All three decisions note that the JSCA eliminated the distinctions between legitimate and illegitimate children and that Jamaican law provides a mechanism by which a child's natural father can establish paternity, in relevant part, by acknowledgment of the child on the child's birth certificate. *Matter of Pagan, Id.*, 22 I & N Dec. at 549. The record here does not demonstrate that the applicant's biological father acknowledged the applicant as his child in her birth certificate in accordance with Jamaican law. The applicant has not submitted a birth certificate listing her father's name. Thus, she was not legitimated under the laws of Jamaica.

The applicant also has not established that she was legitimated under the law of the State of New York. Legitimation under New York law also requires the marriage of the natural parents. *See Matter of Levy*, 17 I & N Dec. 539 (BIA 1980); *see also See Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation).

Counsel, citing *Matter of Vizcaino*, 19 I & N Dec. 644 (BIA 1988), maintains that the applicant was legitimated because she can establish a "bona fide parent-child relationship." *Matter of Vizcaino*, however, is inapplicable to this case as it relates to establishing parentage for immigration purposes pursuant to section 101(b)(1)(d) of the Act, 8 U.S.C. § 1101(b)(1)(d). Section 101(b) of the Act provides the definition of the term "child" for purposes of immigration, and includes children who can establish a bona-fide parental relationship. Section 101(c) of the Act, 8 U.S.C. § 1101(c), which defines the term "child" for purposes of citizenship and nationality, as well as former section 309(a) of the Act, specifically require that a child's paternity be established by legitimation.

The applicant has not established that her paternity was established by legitimation prior to 1986, or prior to the age of 21, or at any time. Thus the applicant cannot fulfill the requirement of former section 309(a) of the Act, and we need not determine the issue of her biological

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[2]Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The applicant was over the age of 18 years on November 14, 1986.

relationship to her father, his citizenship or his physical presence. The applicant cannot demonstrate that she acquired U.S. citizenship at birth under former sections 301 or 309, or any other provision of law.

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.