



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



FILE: [REDACTED] Office: Philadelphia

Date:

SEP 26 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Vietnam on August 16, 1972. The applicant's alleged father, [REDACTED] was born in the United States in May 1932. The applicant's mother, [REDACTED] was born in Vietnam in 1946 and became a naturalized U.S. citizen on August 11, 1997. The applicant's parents never married each other. The applicant seeks a certificate of citizenship under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined the applicant had failed to establish a blood relationship between himself and his alleged U.S. citizen father or that he was legitimated by the alleged U.S. citizen father prior to his 18th birthday. The district director denied the application accordingly.

On appeal, the applicant states that the information used by the district director in making the decision is incorrect, the records are incorrect and he will supply pertinent information which contradicts that decision. The applicant states that [REDACTED] was his stepfather and he carried his stepfather's name to avoid being persecuted by the Communist government in Vietnam. The applicant requests an additional 90 days in which to obtain evidence that [REDACTED] his biological father through the use of a paternity test.

More than 90 days have elapsed since the appeal was filed on May 25, 2000 and no additional documentation has been entered into the record. Therefore, a decision will be entered based on the present record.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Immigration and Nationality Act was in effect at the time of the applicant's birth. This section specifically requires the applicant to establish that prior to the applicant's birth, the citizen parent must have resided (been physically present) in the United States or in an outlying possession for 10 years, at least 5 of which were after age 14.

Section 309. CHILDREN BORN OUT OF WEDLOCK

(a) The provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, 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 was lawfully admitted for permanent residence on June 28, 1990 and he is now 28 years old. The applicant has failed to satisfy the statute at § 309(a)(1), (3) and (4).

8 C.F.R. 341.2(c) provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence. The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.