



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: FEB 04 2000

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT:



Public Copy
Identifying information should be removed to prevent clearly unwarranted invasion of personal privacy

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

Terrance M. O'Reilly, Director
Administrative Appeals Office

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 record reflects that the applicant was born on February 10, 1968 in the Dominican Republic. The applicant's mother, [REDACTED], was born in the Dominican Republic on September 10, 1939 and acquired United States citizenship at birth through her father. The applicant's father, [REDACTED], was born in the Dominican Republic and never claimed to be a U.S. citizen. According to the applicant, his parents allegedly married each other on April 8, 1969 but the record is devoid of evidence to support that assertion. The acting district director rendered a subsequent decision dismissing a request for reconsideration and indicates that the applicant's parents married each other on March 29, 1971 but that evidence is also not present in the record. The applicant was lawfully admitted for permanent residence on May 22, 1971. The applicant seeks a certificate of citizenship under § 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409(c), as a person born out of wedlock to a U.S. citizen mother.

The acting district director denied the application after determining that the record failed to establish that the applicant's mother had the required continuous physical presence in the United States prior to his birth.

On appeal, counsel states that the Service decided the case under the wrong law. The record indicates that the acting district director rendered the initial decision on November 17, 1999 discussing the applicant's eligibility under § 321 of the Act, 8 U.S.C. 1432 regarding the derivation of U.S. citizenship by a child born abroad when one or both parents naturalize. Realizing that § 321 of the Act was not applicable in this matter because it applies to alien parents and the applicant's mother acquired U.S. citizenship at birth, the acting district director then denied the application under the requirements of § 309(c) of the Act, regarding a person born abroad out of wedlock.

Counsel requests an additional 120 days in which to submit a written brief. Since counsel's request is excessive, the request will be denied, a decision will be rendered on the present application and, if counsel's brief is received by the Associate Commissioner by March 16, 2000, it will be reviewed on a Service motion to reopen.

Section 309(c) of the Act states, in pertinent part, that:

Notwithstanding the provision of subsection (a) of this section, a person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the

mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record contains a copy of the applicant's birth certificate listing him as the natural child of [REDACTED] (hereafter referred to as [REDACTED]). The record reflects that [REDACTED] had not been physically present in the United States prior to the applicant's birth, was issued a U.S. passport in a foreign country and did not commence residing in the United States or its outlying territory until 1971. The applicant has failed to establish that his U.S. citizen mother met the continuous physical presence requirements as required under § 309(c) of the Act. Therefore, the applicant did not acquire U.S. citizenship at birth.

In accordance with 8 C.F.R. 341.2(c), the burden of proof rests with the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.