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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted] Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE [redacted] Office: Vermont Service Center Date: JAN 14 2002

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Bermuda on September 6, 1962. The applicant's father, James C. Rush, was born in the United States in August 1937 and died in May 1983. The applicant's mother, Betty V. Lambe, was born in Bermuda in August 1938 and died in August 1968. The applicant's parents never married each other. She was admitted to the United States on June 30, 1989, as a nonimmigrant student. The applicant claims eligibility for a certificate of citizenship based upon her claim that she acquired United States citizenship through her father as a child born out of wedlock or as a child legitimated before age 21 under the law of the father's domicile under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The director determined the applicant had failed to establish her parents married each other resulting in her legitimation prior to her 18th birthday. The director then denied the application accordingly.

On appeal, the applicant states that she has located her father's birth and death certificates. She states that her father visited her in Bermuda in 1970 and promised her that he would have his family together in the United States. The applicant is uncertain why that did not materialize as planned. The record also indicates that James C. Rush served in the U.S. Navy from November 1955 until his honorable discharge in May 1975.

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 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old section 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act. The applicant was 24 years old on November 14, 1986, therefore "old section 309(a) of the Act" shall apply.

The text of "old section 309(a) of the Act" is as follows:

> The provisions of paragraphs (c), (d), (e), and (g) of section 301, and paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act [viz., December 24, 1952], if the paternity of such child is established while such child is under the age of 21 years by legitimation.

According to the advisory opinion rendered by the Library of Congress, legitimation of a child in Bermuda who is born out of

wedlock is accomplished by the marriage of the child's natural parents. The applicant's parents in this matter never married. Therefore, she is ineligible for the benefit sought.

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.