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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUN 24 2003

FILE: [redacted] Office: San Jose (SFR) Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Terry L. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born in Korea on November 3, 1951, as [redacted] The applicant's alleged father, [redacted] was born in the United States in June 1914. Mr. [redacted] adopted the applicant on August 29, 1956, and he was given the name [redacted] The applicant was adopted again on March 15, 1960, at the age of 8 years and 4 months, by [redacted] and [redacted] and was given the name [redacted] The applicant's mother, [redacted] was born in China in May 1928. The applicant's alleged natural parents never married each other. The applicant's mother immigrated by other means and became a naturalized U.S. citizen in September 1976 under the name of [redacted]

The applicant claims eligibility for a certificate of citizenship based upon his claim that he acquired United States citizenship through his biological 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 district director determined the applicant's relationship to his biological-adoptive father was broken when he was readopted prior to his 18th birthday. The district director denied the application accordingly.

On appeal, counsel asserts that "the statute does not state that the father have actually provided support until the child reach 18 years of age." Counsel states that the applicant's adoption by his biological father in 1956 was the "written agreement" to provide financial support until the age of 18, as required by section 309(a)(4)(b) of the Act and upon the completion of the adoption, the applicant became a U.S. citizen. Counsel further asserts that the applicant is eligible under section 309(b) of the Act because his adoption in 1956 established paternity and legitimization.

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 35 years old on November 14, 1986.

Section 309 of the Act effective on November 14, 1986, provides, that:

> (a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and paragraph (2) of section 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.

(b) Except as otherwise provided in section 405, the provisions of section 301(g) shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

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.

Section 309(a)(1) requires that a blood relationship be established by clear and convincing evidence. Section 309(b) requires that paternity be established before the child reaches the age of 21. The only indication in the record that [redacted] is the biological father of the applicant is a 1995 affidavit from Mr. [redacted] The record does not contain a birth certificate or other documentary evidence prior to the 1995 affidavit that would establish that [redacted] and the applicant are related by blood or that [redacted] acknowledged his paternity prior to the applicant turning 21 years of age. Adoption, in and of itself, does not establish paternity.

Pursuant to 8 C.F.R. § 341.2, 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.