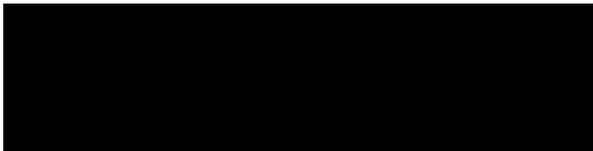


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

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Date: JAN 03 2012

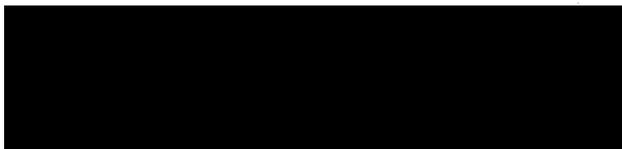
Office: INDIANAPOLIS, IN

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

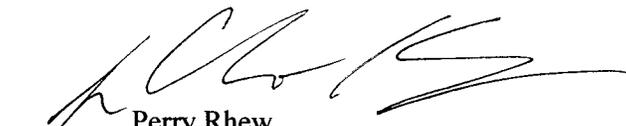


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Indianapolis, Indiana, denied the Application for Certificate of Citizenship (Form N-600) and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The AAO's previous order dismissing the appeal will be affirmed.

The record reflects that the applicant was born on May 7, 1993 in Costa Rica. The applicant's birth certificate lists her parents as [REDACTED]. The applicant claims that her biological father is [REDACTED] who is a native-born U.S. citizen, and the same person as [REDACTED]. The applicant was adopted by her paternal grandparents in 1997. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her biological father.

The field office director denied the applicant's citizenship claim upon finding that the applicant's biological father gave up his parental rights, including the right to transmit citizenship, upon the applicant's adoption. *See Field Office Director's Decision*, dated February 17, 2011. The director further noted that the applicant is not a lawful permanent resident and therefore ineligible to derive U.S. citizenship through her adoptive parents and denied the application accordingly.

On appeal, the applicant, through counsel, stated that the applicant acquired U.S. citizenship at birth through her biological father [REDACTED]. *See Brief in Support of Appeal*. She maintained that [REDACTED] Sanderur used the name [REDACTED] Marchisotta as an alias because he was a fugitive. *Id.* She noted that the record contains DNA evidence establishing the applicant's biological relationship to [REDACTED].

The AAO found that the applicant did not acquire U.S. citizenship at birth because the applicant's father failed to sign page 3 of the Affidavit of Parentage, Physical Presence and Support (Form DS-5507), thereby failing to meet the requirements set forth in section 309(a)(3) of the Act as he did not agree in writing to provide financial support of the applicant until she reached the age of eighteen years. *See AAO's Decision*, dated July 21, 2011.

In his motion to reopen and reconsider, counsel contends that the applicant's father did agree in writing to financially support her until her eighteenth birthday. *See Form I-290B and Brief in Support of Motion to Reopen and Reconsider*, dated August 19, 2011. In support of his contentions, counsel submits the referenced brief and an affidavit from the applicant's father. The entire record was reviewed in rendering a decision in this case.

Section 301(g) of the Act states, in pertinent part, that the following shall be nationals and citizens of the United States:

[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 less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by

such citizen parent may be included in computing the physical presence requirements of this paragraph.

Because the applicant was born out of wedlock, the derivative citizenship provisions set forth in section 309 of the Act also apply to this case.<sup>1</sup> Section 309(a) of the Act, 8 U.S.C. § 1409(a), provides, in pertinent part:

The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . 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.

On motion, counsel contends that the AAO erred in finding that the applicant's father did not agree in writing to financially support her until her eighteenth birthday because the applicant's father signed page 4 of the Form DS-5507, which was notarized by a consular officer, which affirmed that all the statements contained in the Form DS-5507 are true and complete and that the affidavit is for the purpose of establishing his relationship to the child and her claim to U.S. citizenship. Counsel contends that the statements in the Form DS-5507 which the applicant's father affirmed included the statement found on page 3 in regard to birth out of wedlock and financial responsibility even though the

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<sup>1</sup> Former section 309(a) of the Act, which required that paternity be established by legitimation before a child turned 21, is inapplicable to this case because it applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

applicant's father failed to sign page 3 because the language above the signature line on page 4 does not exclude the statements made on page 3

Counsel's contentions are unpersuasive. While the applicant's father states in an affidavit that, when he completed the Form DS-5507 he failed to notice that there was a space for affirming the statement in regard to birth out of wedlock and financial support, that he assumed there was only one place in which to sign the form and that he had the intent to affirm this statement in partially completing the Form DS-5507, the fact remains that the applicant's father failed to fully complete and sign the appropriate sections of the Form DS-5507 in regard to affirmation of birth out of wedlock and financial responsibility. The Form DS-5507 clearly indicates at the top of page 3 that this particular page need only be completed for a child born out of wedlock and gives clear instructions that the page is to be signed before a consular officer or other authorized individual at the time the oath is sworn. As such, not all individuals completing the Form DS-5507 would be required to sign page 3 and the oath on page 4 clearly does not include the statements on page 3 unless they are specifically sworn to at the time the oath is administered by the consular officer or other authorized individual. Counsel fails to state any new facts, makes no argument, and cites no pertinent precedent decisions to show that the AAO's prior decision was erroneous.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that she meets the requirements set forth in section 309(a) of the Act. Accordingly, the applicant is not eligible for citizenship under section 301(g) of the Act.

**ORDER:** The AAO's decision, dated July 21, 2011, is affirmed. The application remains denied.