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U.S. Citizenship
and Immigration
Services

EA2

FILE:

Office: SAN ANTONIO, TX

Date: **JUN 09 2004**

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born out of wedlock on [REDACTED]. The record reflects that the applicant's father [REDACTED] was born in [REDACTED] that he was a United States (U.S.) citizen. The applicant's mother [REDACTED] of a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship through his father.

The district director found the applicant had failed to establish that he was legitimated pursuant to section 309(a)(4) of the Act. The district director additionally found that the applicant had failed to establish that his father had satisfied financial support requirements set forth in section 309(a)(3) of the Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant's sister, [REDACTED] was granted a certificate of citizenship based on evidence similar to that presented in the applicant's case. Counsel asserts further that the evidence in the record demonstrates [REDACTED] over the applicant.

Section 309 of the Act, 8 U.S.C. § 1409, states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of 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.¹

¹ Prior to [REDACTED] required that paternity be established by legitimation while the child was under twenty-one. Amendments made to the Act in 1986, provided that a new section 309(a) would apply to persons who had not attained 18 years of age as of the [REDACTED] date of the enactment of the Immigration and [REDACTED] 3655 (INAA). The amendments provided further that the former section 309(a) applied to any individual who had attained 18 years of age as [REDACTED]. The amendments additionally provided and that the former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to [REDACTED] of the INAA, *supra*.

In the present case, birth, death and baptismal certificate evidence contained in the record reflect that the applicant's father was born a U.S. citizen on [REDACTED]. Birth and baptismal certificate, as well as immigrant petition evidence additionally establishes that [REDACTED] the natural father of the applicant. The applicant has therefore established that he satisfies the requirements set forth in sections 309(a)(1) and (2) of the Act. Nevertheless, the AAO finds the district director's determination that the applicant failed to establish he was legitimated by his father prior to his eighteenth birthday, as required by section 309(a)(4) of the Act, to be correct. The AAO additionally agrees with the district director's determination that the applicant failed to establish that [REDACTED] agreed in writing to provide financial support for the applicant prior to his eighteenth birthday.²

Upon review of the evidence in the record, the AAO notes the following relevant documents submitted in support of the applicant's certificate of citizenship application:

Affidavit of Paternity signed under oath by [REDACTED] stating that he is the natural father of the applicant and his sister [REDACTED] and stating that he agrees to provide financial support for the applicant and his sister until they reach the age of eighteen³;

Petition for issuance of immigrant visa filed by [REDACTED] for the applicant's sister [REDACTED] indicating that the applicant is also his child⁴;

Birth certificate for the applicant issued on [REDACTED] when the applicant was nine years old, reflecting that [REDACTED] is the applicant's father;

Baptismal certificate for the applicant reflecting that the applicant was baptized on [REDACTED] and that [REDACTED] was his father;

Decree of paternity and legitimation issued by the [REDACTED] ordering that the [REDACTED] and born out of wedlock [REDACTED] be considered the legitimate child of [REDACTED]

Social Security Administration documentation addressed to [REDACTED] reflecting that [REDACTED] Social Security benefits for the applicant between [REDACTED]

The AAO notes that the Affidavit of Paternity document stating that [REDACTED] is the natural father of the applicant and his sister [REDACTED] and stating that [REDACTED] agreed to provide financial support for the applicant and his sister until they reached the age of eighteen, was signed under oath by the [REDACTED] on [REDACTED] when the applicant was twenty years old. The document therefore fails to satisfy the requirement set forth in section 309(a)(3) of the Act, requiring that acknowledgement of paternity and a

² The AAO notes that although counsel addressed [REDACTED] U.S. citizenship status and his paternity over the applicant on appeal, counsel did not address the basis of the district director's denial of the applicant's citizenship application (the applicant's failure to meet requirements set forth in section 309(a)(3) and 309(a)(4) of the Act).

³ The AAO notes that the affidavit of paternity does not contain an accurate date of birth for the applicant, stating only the year 1972 as the date of birth.

⁴ The AAO notes that the Petition contains an erroneous date of birth for the applicant, stating that he was born on [REDACTED]

signed statement of financial support occur prior to the applicant's eighteenth birthday. The AAO notes further that, although the record contains evidence that a Texas court ordered decree of paternity and legitimation was issued to the applicant's sister prior to her eighteenth birthday, the applicant was over the age of eighteen at the time his sister's decree was issued, and the record contains no evidence establishing that the applicant ever obtained a court ordered decree of legitimation.⁵ Moreover, the AAO notes that the applicant failed to establish that he was legitimated in Mexico prior to his eighteenth birthday, as Mexican law requires marriage between the parents in order for legitimation to occur.⁶

Because the applicant failed to establish that he meets the requirements set forth in section 309(a) of the Act, the AAO finds it unnecessary to adjudicate whether the applicant's father meets the additional physical presence requirements set forth in section 301(g) of the Act, 8 U.S.C. § 1401(g).⁷

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has failed to meet his burden. The appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.

⁵ Section 13.21 of the Texas Family Code, in existence prior to the applicant's twenty-first birthday, provided, in pertinent part, that:

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father . . . may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(a) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

- 1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;
- 2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
- 3) the mother or the managing conservator, if any, has consented to the decree.

⁶ See Article 130 of the Constitution of Mexico.

⁷ Section 301(g) of the Act, 8 U.S.C. § 1401(g) provides in pertinent part that the following shall be nationals and citizens of the United States at birth:

(g) 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.