



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: EL PASO, TX

Date: JUN 09 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Sections 309 and 301 of the
Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

[REDACTED]

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 [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born [REDACTED]. The record reflects that the applicant's father [REDACTED] was born in [REDACTED] and that he is a United States (U.S.) citizen. The applicant's [REDACTED] was born in Mexico and is not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he derived U.S. citizenship at birth through his father.

The interim district director concluded the applicant had failed to establish that his father was physically present in the United States for at least 10 years prior to the applicant's birth, 5 years of which occurred after the applicant's father turned 14. The application was denied accordingly.

The applicant's representative asserts on appeal that she is providing additional evidence to establish the applicant's eligibility for U.S. citizenship. The representative makes no other assertions on appeal. In support of the applicant's appeal, the representative submits documentation indicating that the applicant's father [REDACTED] belonged to a Disabled American Veterans [REDACTED]. The representative additionally submits a water utility service letter referencing account activity for [REDACTED] from November 1973 through December 2001. The representative also submits a [REDACTED] congressional letter addressed to [REDACTED] as well as a summary FICA earnings statement and documentation reflecting that [REDACTED] was in the U.S. military and that he received U.S. veterans benefits.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. [REDACTED] 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born [REDACTED]. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

In the present case, the applicant must establish that his father was physically present in the U.S. for 10 years between [REDACTED] and [REDACTED] and that 5 of those years occurred after [REDACTED] when his father turned 14. The record contains the following evidence pertaining to [REDACTED] physical presence in the United States during the requisite time period:

An El Paso County, Texas birth certificate reflecting that [REDACTED] was born in [REDACTED]

A Certificate of Initiation to the Disabled American Veterans Association in [REDACTED]

[REDACTED] congressional letter from [REDACTED] acknowledging [REDACTED] help and support during the democratic primary campaign;

A summary FICA earnings statement reflecting [REDACTED] (\$18), 1941-1943 (\$42, \$114, \$100), 1946-1960 (ranging from \$47 to \$2660), 1964 (\$3180), 1966-1969 (ranging from \$727 to \$4092), and 1971-1972 (\$3102, \$810);

A U.S. Army Certificate of Honorable Discharge reflecting that [REDACTED] enlisted in [REDACTED] and that he separated from the [REDACTED]

[REDACTED] letter stating [REDACTED] obtained utility services [REDACTED] through [REDACTED]

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. In [REDACTED] the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true.

The AAO finds that the cumulative evidence presented in the applicant's case establishes that [REDACTED] was probably physically present in the U.S. for a period of ten years between [REDACTED] and that 5 of those years occurred after [REDACTED] when [REDACTED] fourteen. [REDACTED]

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See* [REDACTED] 29 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. [REDACTED] noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the AAO nevertheless finds that the applicant is ineligible for a certificate of citizenship because he did not establish that he was legitimated as required by section 309 of the Act, 8 U.S.C. § 1409.

Prior to [REDACTED] of the former Act required that in cases involving a child born out of wedlock, paternity must have been established by legitimation while the child was under twenty-one. Subsequent amendments made to the [REDACTED] provided that a new section 309(a) applied to persons who had not attained eighteen years of age as of the [REDACTED] date of the enactment of the Immigration and [REDACTED] Act, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). *See section 13 of the INAA, supra.*

In the present case, the applicant was under the age of eighteen on [REDACTED]. The AAO will therefore look to the legitimation requirements set forth in the new section 309 of the Act.

Section 309 of the Act provides, 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.

The record in this case contains a certificate of recognition issued by the State of [REDACTED] reflecting that [REDACTED] formally recognized the applicant as his son [REDACTED] prior to the applicant's eighteenth birthday. The AAO finds that the certificate of recognition, in and of itself, fails to establish that the applicant was legitimated. The AAO notes that the laws in Mexico require parents of a child born out of wedlock to marry in order for legitimation to occur. *See* Article 130 of the Constitution of Mexico. The AAO notes further that the applicant additionally failed to establish that his father agreed in writing to provide financial support for him until he reached the age of eighteen, as required by section 309(a)(3) of the Act.

Accordingly, the AAO finds that the applicant has failed to establish that he was legitimated as required by section 309 of the Act. He is therefore ineligible to derive citizenship under section 309 of the Act.

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 has failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.