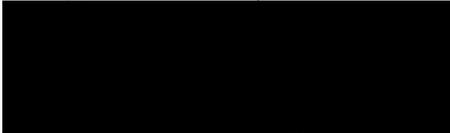


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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: EL PASO, TEXAS

Date: **AUG 10 2005**

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:

SELF-REPRESENTED

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, El Paso, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on January 22, 1973. The applicant's father's name is not recorded on his birth certificate, however the applicant claims that his father was [REDACTED] [REDACTED] was born on July 23, 1943, in New Mexico, and he is a U.S. citizen. The applicant claims that [REDACTED] also known as [REDACTED]. The applicant's mother [REDACTED] was born in Mexico, and she is not a U.S. citizen. The record reflects that 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, and section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7) (now known as § 301(g) of the Act, 8 U.S.C. § 1401(g)), based on the claim that he derived U.S. citizenship at birth through his father.

The district director determined the applicant had failed to establish that [REDACTED] [REDACTED] were the same person or that his father, [REDACTED] was a U.S. citizen. The district director determined that the applicant had also failed to establish that he was legitimated by [REDACTED] as required by section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409. The application was denied accordingly.

On appeal, the applicant asserts that court documents establish [REDACTED] are the same person, and that his father is a U.S. citizen. The applicant does not address the legitimation issue raised in the district director's decision.

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born in 1973. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), therefore applies to the present matter.

Section 301(a)(7) of the former Act (now known as section 301(g) of the Act) 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 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 ten years, at least five of which were after attaining the age of fourteen years

However, in order to qualify for consideration under section 301(a)(7) of the former Act, the applicant must first establish that he meets section 309 of the Act, requirements for persons born out of wedlock.

Section 309(a) of the Act states in pertinent part that:

(a) 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.

The AAO notes the district director's finding that DNA evidence establishes the applicant is the biological son of [REDACTED]

The AAO finds further that the evidence submitted by the applicant establishes by a preponderance of the evidence that [REDACTED] are the same person and that the applicant's father is a U.S. citizen. The record contains a New Mexico birth certificate reflecting that [REDACTED] was born in New Mexico on July 23, 1943 to [REDACTED] (father) and [REDACTED] (mother). The record additionally contains several Chaves County, New Mexico court documents for [REDACTED] and [REDACTED]. A July 22, 1964, pre-sentence report states that [REDACTED] was born on July 23, 1943, and that his parents are [REDACTED]. The pre-sentence report also states that [REDACTED] children are [REDACTED] ½ years old and [REDACTED] months old, and that his wife is two months pregnant. The pre-sentence report states further that [REDACTED] married on February 5, 1962, and that his wife's name is [REDACTED]. A March 5, 1965, Divorce complaint filed in the District Court of Chaves, New Mexico, reflects that [REDACTED] filed for a divorce from [REDACTED]. The complaint states that [REDACTED] is also known as [REDACTED] and the complaint lists the couple's children as [REDACTED] 3 years old, [REDACTED] ½ years old and [REDACTED] 6 months old. The AAO finds that the above reference evidence establishes that [REDACTED] are the same person.

Nevertheless, the AAO finds that the applicant has failed to establish that [REDACTED] agreed in writing to provide financial support to the applicant until he reached the age of eighteen, or that [REDACTED] legitimated the applicant pursuant to Mexican law (requiring intermarriage of parents, *see* Article 130 of Mexican Constitution) or pursuant to New Mexico law (requiring intermarriage of parents, or that father signs a written document recognizing the child as his heir, *see* New Mexico Statutes Annotated § 45-2-109 and § 45-2-109(2)). The applicant additionally failed to establish that [REDACTED] acknowledged paternity over the applicant in writing under oath, or that in the alternative, [REDACTED] paternity over the applicant was established by adjudication of a competent court. The applicant has therefore failed to establish that he meets the requirements for citizenship as set forth in section 309(a) of the Act. Accordingly, he does not qualify for consideration under the provisions contained in section 301(a)(7) of the former Act.



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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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.