



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SEATTLE, WA

Date: **JUL 18 2005**

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 1993 Revised Statutes, as amended by the Act of May 24, 1934, Pub.L. 73-250, 48 Stat. 797

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 District Director, Seattle Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on March 31, 1938 of a U.S. citizen father and a Mexican mother. The applicant's father was born in Texas on July 1, 1911. The evidence on the record does not establish that the applicant's parents ever married each other.

The AAO notes that the district director erroneously adjudicated the instant application pursuant to § 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401, which was enacted on November 14, 1986. "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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1938; therefore, the applicable law in this case is Section 1993, Revised Statutes of 1878, as amended by the Act of May 24, 1934 (amended Section 1993).

The district director found that the applicant failed to resolve inconsistencies in the record regarding whether her parents were ever married. The director pointed out that the applicant stated that her parents were never married, while, on the other hand, her father stated that he did marry the applicant's mother. The director noted that the applicant did not submit her parents' marriage certificate or a statement from the appropriate authorities indicating the unavailability of such a certificate, nor did the applicant provide evidence of a father-daughter relationship between herself and her U.S. citizen father. The district director concluded that, given the discrepancies on the record with regard to the applicant's legitimacy, the applicant failed to establish that she was eligible for a certificate of U.S. citizenship based on her father's citizenship.

On appeal, counsel asserts that the applicant has established eligibility for a certificate of citizenship regardless of whether she is considered to have been born to married parents or out of wedlock. Counsel maintains that the applicant did not intentionally create inconsistencies in her background information; she merely provided that information which was known to her. On appeal, counsel submits copies of documents previously found on the record. The AAO has reviewed the entire record and finds that the applicant has established that she acquired U.S. citizenship at birth through her father.

The amended Section 1993 states that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

A preliminary inquiry must be made into whether the applicant is considered to be a legitimate child or one born out of wedlock, since her legal status with regard to her paternity affects her eligibility to acquire U.S. citizenship through her father. The amended Section 1993 permits only legitimate children of U.S. citizen fathers to acquire U.S. citizenship by birth abroad. Under this law, children born out of wedlock to U.S. citizen fathers may acquire U.S. citizenship at birth only if they were subsequently legitimated under the laws of the state or country of the father's domicile.

If the applicant's parents were married, then the applicant would be considered to be legitimate. Evidence of the applicant's parents' marriage includes an affidavit dated January 27, 1998 in which her father stated that he was married to her mother in 1936, and the applicant's sister's birth certificate, which indicates that the applicant's parents were married when her sister was born. The applicant's father's name is listed on the applicant's birth certificate, but the certificate contains no indication that her parents were married. The record contains no marriage certificate or primary evidence of her parents' marriage; in fact, the applicant stated that, to her knowledge, her parents were not married. The evidence on the record fails to establish that the applicant's parents were married at any time; thus, the AAO must determine whether the evidence shows that the applicant was legitimated according to the laws of her father's domicile. The AAO notes that, in accordance with amended Section 1993, the legitimation may have occurred at any time, as long as the applicable state law set no age limits on legitimation.

According to the evidence on the record, the applicant's father's domicile at the time she was born was in Mexico. Pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico becomes legitimated only upon the civil marriage of his or her parents. See *Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). See also, *Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The applicant failed to establish that her parents were at any time married; therefore, the applicant was not legitimated pursuant to the laws in Mexico. Counsel refers to articles 360, 369, and 389 of the Mexican Civil Code, which speak of the establishment of paternity. The latter, however, is not the equivalent of legitimation, which, as noted above, is addressed in the Mexican Constitution.

The applicant's father stated in his affidavit that he resided in Texas, Montana, Idaho, Oregon, Wisconsin, and Washington. The record, however, does not contain evidence pertaining to any domicile in the United States other than in the state of Washington. According to the Revised Code of Washington § 6.26.040(d) (1992) if, while the child is a minor, the father receives the child into his home and openly holds out the child as his own, the child may be legitimated despite the absence of marriage of the parents. The record contains affidavits executed by the applicant's father and her first cousin attesting to the fact that the applicant lived with her father when she was a minor, that is, that the applicant's father received her into his home while she was a minor. It is therefore concluded that the applicant was legitimated according to the laws of Washington.

The record also contains evidence such as the applicant's father's birth and baptismal certificates showing that her father resided in the United States prior to the applicant's birth. The AAO also notes that the record includes a copy of a U.S. citizen border crossing identification document issued in the applicant's name in 1951. The applicant has submitted sufficient evidence to establish her eligibility for a certificate of U.S. citizenship pursuant to the amended Section 1993.

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 AAO finds that the applicant has met her burden of proof; hence, she derives citizenship through her father pursuant to the amended Section 1993. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.