



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: EL PASO, TEXAS Date: JUN 16 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 309 of the Immigration and Nationality Act, 8 U.S.C. § 1401.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, Texas, on September 23, 2004. The applicant filed a motion to reopen on October 14, 2004. The district director affirmed his denial on January 12, 2005. The matter 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 August 23, 1977. The applicant's father is not a U.S. citizen. The applicant's mother was born in Texas in 1957, and she is a U.S. citizen. The record reflects that the applicant's parents were not married at the time of the applicant's birth, but they subsequently married each other in 1985, when the applicant was seven years old. The applicant seeks a certificate of citizenship pursuant to § 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen mother.

The district director concluded the applicant had failed to establish that his mother was physically present in the U.S. for the requisite time period set forth in § 301(a)(7) of the former Act. The application was denied accordingly. On appeal, counsel states that the applicant's maternal grandmother was a lawful permanent resident (LPR) of the United States, and that the applicant "might be eligible for section 301(a)(7)." Counsel also indicates that he would "explore the mother's presence in the United States." As of this date, the AAO has received no further evidence in relation to the latter issue, however, thus, the record is complete.

"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).

Though later legitimated, the applicant was born out of wedlock, therefore, we must examine his application under section 309 of the former Act in effect at the time of his birth. Amendments made to the Act in 1986, provided that a new section 309 would apply to persons who had not attained eighteen years of age as of November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided that the former section 309 applied to any individual who had attained eighteen years of age as of November 14, 1986, and that former section 309 applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See section 13 of the INAA, supra. See also section 8(r) of the Immigration Technical Corrections Act of 1988*, Pub. L. No. 100-525, 102 Stat. 2609.

In the present matter, the applicant was not yet eighteen years of age as of November 14, 1986, but was legitimated prior to the amendments, therefore, § 309 of the former Act applies to the instant case.

Section 309 of the former Act relates to children born out of wedlock and states:

(a) The provisions of paragraphs (3), (4), (5) and (7) of section 301(a), and of paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

(b) Except as otherwise provided in section 405, the provisions of section 301(a)(7) shall apply to a child born out-of wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, on or after the effective date of this Act, outside the United States out-of-wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The applicant's mother was a U.S. citizen at the time of his birth. Therefore, § 309(c) applies. The applicant's mother's birth certificate provides evidence that she was physically present in the United States as of January 19, 1957. According to church records, the applicant's mother was baptized on February 17, 1957 and was confirmed on June 16, 1957 in El Paso, Texas. The record also contains her mother's sister's birth certificate, showing that the applicant's grandmother gave birth to the applicant's aunt in the United States on November 11, 1958. In her affidavit dated October 13, 2004, the applicant's mother states that she lived with her mother at her mother's employer's home in Texas when she was young. The evidence on the record establishes by a preponderance of the evidence at least one year of continuous physical presence for the applicant's mother; hence, pursuant to § 309(c) of the former Act, the applicant acquired U.S. citizenship at birth through his mother.

The regulations at 8 C.F.R. § 341(c) state that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met his burden of proof in establishing eligibility for a certificate of citizenship, having acquired U.S. citizenship at birth out of wedlock to his U.S. citizen mother.

ORDER: The appeal is sustained.