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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX (TUCSON), AZ

Date: MAY 24 2005

IN RE:

Applicant:

[REDACTED]

APPLICATION:

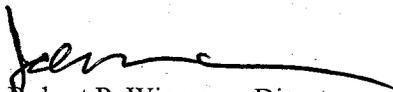
Application for Certificate of Citizenship under sections 309 and 301 of the  
Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

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.

*For*  
  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Phoenix, Arizona, and 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 November 14, 1982. The applicant claims that his father was [REDACTED] as born on [REDACTED] in Mexico and he was a U.S. citizen at birth. [REDACTED] was born on September 12, 1982, approximately two months prior to the applicant's birth. The applicant's mother, [REDACTED] was born in Mexico on [REDACTED] 1944. She is not a U.S. citizen. The record reflects that the applicant's parents did not marry, and the applicant's birth certificate contains no paternal information. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he derived U.S. citizenship at birth through his father.

The district director determined that the applicant had failed to establish that [REDACTED] was his father. The district director determined further 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 U.S. Social Security Administration, birth certificate and affidavit evidence establishes that [REDACTED] was his biological father.

"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 1982. Section 301(a)(7) of the former Immigration and Nationality Act (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

The AAO notes that 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.<sup>1</sup>

<sup>1</sup> Prior to November 14, 1986, section 309 of the former Act required that paternity be established by legitimation while a child was under twenty-one. Subsequent amendments made to the Act in 1986, provided that a new section 309(a) applied to persons who had not attained eighteen years of age as of the November 14, 1986, date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided that former section 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. Children who were between the ages of fifteen and eighteen on November 14, 1986, could choose to have either pre or post-amendment provisions apply to them. See sections 13 and 23 of the INAA, *supra*. See also sections 8(r) and 9(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609. In the present matter, the applicant was born prior to November 14, 1986, however, he was under the age of

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,<sup>2</sup>
- (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 that a June 3, 2004, letter from the Social Security Administration, referencing [REDACTED] social security number, states that the applicant, [REDACTED] as entitled to surviving child's Social Security benefits from December 1982 to January 2002. The AAO notes further that [REDACTED] full name was "[REDACTED]" and although the applicant's birth certificate does not contain the name of his father, the applicant's full name is recorded as, [REDACTED] on his birth certificate.

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 *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), 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 evidence submitted by the applicant establishes by a preponderance of the evidence that [REDACTED] was his father.

The AAO finds, however, that the applicant has failed to establish that [REDACTED] acknowledged paternity over the applicant in writing under oath, or that [REDACTED] paternity over the applicant was established by adjudication of a competent court. The applicant has therefore failed to establish that he was legitimated by his

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fifteen on November 14, 1986. His citizenship claim is therefore assessed pursuant to amended section 309(a) of the Act requirements.

<sup>2</sup> The Commissioner indicated in *Matter of E-M-*, 20 I&N Dec. 79 (Comm. 1989), that "[p]roof must demonstrate that it is highly probably true" to meet a clear and convincing standard.

father as set forth in section 309(a) of the Act. He is thus ineligible for citizenship under section 301(a)(7) of the former 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.