



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARLINGEN, TX

Date: JAN 09 2007

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Sections 309(a) and 301(g)
of the Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a)
and 1401(g)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on November 22, 1982 in Mexico. The individual identified as the applicant's natural father, [REDACTED] was born on August 13, 1951 in Uvalde, Texas. The applicant's mother, [REDACTED] based on the statements of the applicant, is a Mexican citizen. The applicant's parents married on May 23, 1985, when the applicant was two years of age. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship at birth through his natural father.

Based on the evidence of record, the district director determined that the applicant had not established that his father, prior to his birth, had been physically present in the United States for at least ten years, five of which followed his 14th birthday, as required by section 301(a)(7) of the Act. Accordingly, he denied the application.

On appeal, counsel asserts that the denial of the instant application was the result of CIS' failure to consider witness testimony, to make a finding of credibility and to follow regulatory guidelines and the Adjudicators Field Manual.

As the applicant was born out of wedlock to parents who married on May 23, 1985, the derivative citizenship provisions set forth in section 309 of the Act apply to this case. Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached twenty-one years of age. As of that date, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) amended section 309, applying the changed provisions to persons who were not yet 18 years of age on November 14, 1986. As the applicant in this case was only three years old on November 14, 1986, his application will be considered under section 309(a) of the Act, as established by the 1986 amendments.

Section 309(a) of the Act states:

- (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.

Should the applicant establish his eligibility under section 309(a) of the Act, he must also prove that prior to his birth, his father was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which followed his 14th birthday, as required by section 301(g) of the Act. Honorable service in the U.S. military, employment with the U.S. Government or with certain international organizations by U.S. citizen parents may qualify as physical presence in the United States.

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes he was born in Mexico on November 22, 1982 to [REDACTED] of the United States and [REDACTED] of Mexico. He has also provided a birth certificate for his father that demonstrates he was born in Uvalde, Texas. The record additionally contains a marriage certificate that establishes the applicant's parents were married in Ottawa, Michigan on May 23, 1985. Based on the foregoing evidence, the AAO concludes that the applicant has met the requirements of section 309(a)(1), (2), and (4)(A) of the Act. It also finds the evidence of record to establish that, prior to his birth, his father was physically present in the United States or its outlying possessions for a period or periods of at less than five years, all of which followed his 14th birthday. The copy of Mr. [REDACTED] social security earnings statement for the years 1976 through 1980, when considered with the sworn affidavit provided by [REDACTED] of [REDACTED] which states that Mr. [REDACTED] was in their employ during the years 1969-1972, is sufficient to demonstrate five years of physical presence in the United States, at least two of which followed Mr. [REDACTED] 14th birthday, as required by section 301(g) of the Act.

Although the record contains no evidence that directly responds to the requirement of section 309(a)(3) of the Act – the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches 18 years of age – the AAO finds the documented marriage of the applicant's parents to be sufficient proof of Mr. [REDACTED] financial support of the applicant prior to his 18th birthday. Accordingly, the appeal will be sustained.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met his burden in this proceeding.

ORDER: The appeal is sustained.