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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN ANTONIO, TEXAS

Date:

NOV 27 2007

IN RE:

Applicant:

APPLICATION:

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

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on June 1, 1961 in Mexico. The applicant's parents are [REDACTED]. The applicant's mother acquired U.S. citizenship at birth, on May 3, 1939. The applicant's father was born in Texas, on December 13, 1938. The applicant's parents were never married. The applicant claims that he derived U.S. citizenship at birth and seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409.

The district director denied the application finding that the applicant did not acquire U.S. citizenship from his father because he was born out-of-wedlock and was never legitimated. The district director further found that the applicant's mother was not continuously present in the United States for the required period of time, so the applicant did not acquire U.S. citizenship through her.

On appeal, the applicant requests that his application be granted because he wants to remain in the United States. The applicant does not provide any additional argument or evidence bearing on his citizenship claim.

"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 in this case was born in 1961.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act, as in effect in 1961, apply to his case. Section 309(a) of the Act, 8 U.S.C. § 1409(a), as enacted in 1952, provided, in relevant part,

(a) [t]he provisions of paragraph[] (3) . . . of section 301(a) . . . of this title shall apply as of the date of birth to a child 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.

Section 309(c) of the Act, 8 U.S.C. § 1409(c), provides, in relevant part,

a person born, after December 23, 1952, outside the United States and 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 other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

Section 301(a)(3) of the Act, 8 U.S.C. § 1401(a)(3), provided, in turn, that "a person born outside of the United States . . . of parents both of whom are citizens of the United States . . ." shall be a U.S. citizen.

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's father's birth certificate, the applicant's mother's certificate of citizenship, and a copy of the results of a DNA test establishing the applicant's father's paternity. The AAO notes that the applicant's father's name is not listed on applicant's birth certificate. The AAO further notes that sworn statements in the record confirm that the applicant's parents were never married to each other, and that the applicant was not legitimated by his father.

Section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect in 1961, required the applicant to establish that he was legitimated by his father prior to his 21st birthday. Because the applicant was not legitimated, he did not acquire U.S. citizenship from his father. Section 309(c) of the Act, 8 U.S.C. § 1409(c), requires that the applicant establish that he was born out-of-wedlock to a U.S. citizen mother who had been physically present in the United States for a continuous period of one year. According to the information provided by the applicant and his mother, the applicant's mother was not continuously present in the United States for one year prior to the applicant's birth. Therefore, the AAO concludes that the applicant did not acquire U.S. citizenship from his mother.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.