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U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN ANTONIO, TX

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim 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 February 6, 1999 in Mexico. His parents, as listed on his birth certificate, are [REDACTED]. The applicant's father is a native-born U.S. citizen, born on February 8, 1984 in Texas. The applicant's parents were never married. The applicant presently seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401 and 1409.

The district director denied the applicant's citizenship claim upon finding that the applicant could not establish that his father was present in the United States for two years after attaining the age of 14. The application was denied accordingly.

On appeal, the applicant's father states that "it is not [his] son's fault [sic]" that he was born when his father was 14. See Statement of the Applicant on Form I-290B, Notice of Appeal.

"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 1999. Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act, as amended, apply to his case.

Section 309 of the Act, 8 U.S.C. § 1409, 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,
- (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.

Section 301(g) of the Act, 8 U.S.C. § 1401(g), in turn provides that:

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 five years, at least two of which were after attaining the age of fourteen years [shall be a citizen of the United States.

The AAO notes that the applicant was born on February 6, 1999. The applicant's father was born on February 8, 1984. Thus, the applicant's father was 14 years old when the applicant was born, and cannot establish that he was physically present in the United States for two years after attaining the age of 14 but prior to the applicant's birth. The applicant therefore did not acquire U.S. citizenship at birth. Having found that the applicant cannot establish that his father was physically present as required, the AAO need not address whether the applicant established eligibility under section 309(a) of the Act, 8 U.S.C. § 1409(a).

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988).

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 in this case cannot establish that he acquired citizenship from his father and therefore failed to meet his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.