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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: EL PASO, TEXAS Date: JUN 29 2004

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:

[redacted]

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, Director
Administrative Appeals Office

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

The applicant was born in The record reflects that the applicant's and that he is a United States (U.S.) citizen. The applicant's mother was born and is not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship through his father.

The interim district director (IDD) found the applicant had failed to establish that he was legitimated by his father prior to his twenty-first birthday, as required by sections 309 and 301 of the former Act. The application was denied accordingly.

On appeal, counsel asserts that publicly acknowledged his paternity over the applicant at the time of his birth, and that such acknowledgement constitutes legitimation of the applicant under Mexican law. Counsel asserts further that in the event that the applicant's appeal is denied by the AAO, the applicant is entitled to a new interview before the IDD because he did not have a citizenship interview and was thereby denied an opportunity to present testimony in support of his application, in violation of 8 C.F.R. § 341.2(a)(2).

"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." 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted).

Prior to section 309 of the former Act required that in cases involving a child born out of wedlock, paternity must have been established by legitimation while the 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 date of the enactment of the Immigration and Nationality Act Amendments of 1986, 100 Stat. 3655 (INAA). Amendments provided further that the former section 309(a) applied to any individual who had attained 18 years of age as of and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to *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 case, the applicant was born prior to and he was over the age of eighteen the AAO will therefore look to legitimation requirements as they existed in section 309 of the former Act.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child

> is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.[1]

In the present case, counsel asserts that the applicant's father's name is contained on the applicant's birth certificate, and that under Mexican Civil Code, articles 3 and 4, the father of a child born out of wedlock may legitimate the child by officially registering and acknowledging the child as his.

The AAO finds that the Mexican Civil Code legal provisions referred to by counsel pertain solely to the requirements for the establishment of paternity over out of wedlock children, and that they do not set forth the requirements for legitimation of a child born out of wedlock in Mexico. The AAO finds further that precedent legal decisions have consistently held that pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico, becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). 14 I&N Dec. 608 (BIA 1974) and 8 I&N Dec. 72 (BIA 1981). The applicant failed to establish that his parents married prior to his twenty-first birthday. The AAO finds that the applicant was therefore not legitimated by his father pursuant to the laws in Mexico.

The AAO additionally finds that the applicant failed to establish he was legitimated by his father in accordance with legitimation laws in Texas, prior to his twenty-first birthday.

Section 13.21 of the Texas Family Code, in existence prior to the applicant's twenty-first birthday, provided, in pertinent part:

> If a statement of paternity has been executed by the father of an illegitimate child, the father . . . may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.
>
> (a) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:
>
> 1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;
> 2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
> 3) the mother or the managing conservator, if any, has consented to the decree.

The record in the present case does not contain a court decree indicating that the applicant's father took any action to legitimate the applicant under section 13.21 of the Texas Family Code, prior to his twenty-first birthday.

Accordingly, the AAO finds that the applicant has failed to establish that he was legitimated by his father, as required by section 309 of the former Act. He is therefore ineligible to derive citizenship under section 309 of the Act, and the physical presence requirements set forth in section 301 of the former Act need not be addressed.

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[1] The AAO notes that the applicant falls within a narrow statutory age bracket which allows him to satisfy section 309 legitimation requirements upon showing that he was legitimated prior to the age of twenty-one rather than the age of sixteen. *See Miller v. Christopher,* 96 F.3d 1467, 1468 (U.S.App. D.C. 1996).

Moreover, the AAO is unpersuaded by counsel's assertion that requirements set forth in 8 C.F.R. § 341.2(a) were violated in the applicant's case. 8 C.F.R. § 341.2(a) states in pertinent part:

> (a) Personal appearance of applicant and parent or guardian --
>
> (1) When testimony may be omitted. An application received at a Service office having jurisdiction over the applicant's residence may be processed without interview if the Service officer adjudicating the case has in the Service administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship

The record in the present case contains clear evidence that the applicant's parents never married. The applicant's Form N-600, Application for Certificate of Citizenship (N-600 application) states that the applicant's parents were never married. Moreover, the applicant's Mexican birth certificate states that he is the "natural" rather than "legitimate In addition, a affidavit written by the applicant's mother states that she and the applicant's father never lived together, and a affidavit written by the applicant's father states that he never married the applicant's mother. The AAO finds that the record in the present case contained all of the documentation necessary to establish whether the applicant was legitimated for section 309 of the former Act purposes. The requirements set forth in 8 C.F.R. § 341.2(a) were therefore not violated.

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 in the present case, and the appeal will be dismissed.

ORDER: The appeal is dismissed.