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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: OMAHA, NEBRASKA Date: MAY 25 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409.

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, Omaha, Nebraska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born out of wedlock on March 16, 1964, in Matamoros, Mexico. The record reflects that the applicant's father, was born in Brownsville, Texas on March 22, 1936, and that he is a United States (U.S.) citizen. The applicant's mother, was born in Mexico and was not a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 309 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship through his father.

In a decision dated April 30, 2003, the interim district director found the applicant had failed to establish that he was legitimated by his father prior to his twenty-first birthday. The interim district director additionally found that the applicant had failed to establish that his father satisfied the physical presence requirements set forth in section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401. The application was denied accordingly. The applicant filed a second N-600, Application for Certificate of Citizenship (N-600 application) on August 14, 2003, requesting reconsideration of his claim under section 309 of the Act. In response, the interim district director issued a second decision, dated September 18, 2003, concluding that the applicant had failed to meet legitimation and financial support requirements set forth in section 309 of the Act. The interim district director concluded further that the applicant had failed to establish that his father met physical presence requirements set forth in section 301 of the Act, and the previous denial of the application was affirmed.

On appeal, counsel asserts that the evidence submitted establishes that the applicant's father is a U.S. citizen and that his father meets physical presence requirements for certificate of citizenship purposes. In support of his assertion, counsel submits a copy of Mr. Selective Service registration card reflecting that he lived and worked in Texas on March 25, 1954.

"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).

Prior to November 14, 1986, 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 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). Amendments provided further that the former section 309(a) applied to any individual who had attained 18 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. *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 November 14, 1986, and he was over the age of eighteen on November 14, 1986. The AAO will therefore look to the 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, the applicant failed to establish that he was legitimated prior to his twenty-first birthday. The AAO notes that the applicant was not legitimated in Mexico prior to his twenty-first birthday, as Mexican law requires marriage between the parents in order for legitimation to occur.[2] The AAO notes further that the applicant also failed to establish that he was legitimated by his father in accordance with Texas paternity laws prior to his twenty-first birthday.

Section 13.21 of the Texas Family Code provided, in pertinent part, that:

> (a) 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:
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> 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 AAO notes that the record contains a notarized affidavit signed by Mr. [redacted] stating that he is the natural father of the applicant and that he provided financial support to his son until the applicant reached the age of eighteen. However, the affidavit was signed on May 20, 2002, when the applicant was thirty-eight years old, and there is no evidence that Mr. [redacted] obtained a court ordered legitimation decree for the applicant at any time in the State of Texas or anywhere else. Moreover, the AAO notes that the record contains no evidence to indicate that the applicant was ever in the legal custody of his father. Accordingly, the AAO finds that the applicant has failed to establish that he was legitimated under the laws of his, or his father's, residence or domicile. The applicant is therefore statutorily ineligible to derive citizenship under section 309 of the former Act. Because the applicant failed to establish that he meets the requirements set forth in section 309(a) of the Act, the AAO finds it unnecessary to adjudicate whether the applicant's father

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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).

[2] See Article 130 of the Constitution of Mexico.

meets the additional physical presence requirements set forth in section 301 of the former Act, 8 U.S.C. § 1401.[3]

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] In order to derive citizenship pursuant to section 301(a)(7) of the former Act, it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See section 301(a)(7) of the former Act.*