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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: HARLINGEN, TX Date: JAN 08 2007

IN RE: Applicant: [REDACTED]

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:

[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, 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 dismissed.

The record reflects that the applicant was born on November 9, 1982 in Mexico. The individual identified as the applicant's natural father, [REDACTED] acquired U.S. citizenship at his birth on July 2, 1942. The applicant's mother, [REDACTED] was a citizen of Mexico at the time of the applicant's birth and the record does not indicate that she has acquired another citizenship. The applicant's parents never married. The applicant seeks a certificate of citizenship pursuant to sections 309(a) and 301(g) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. §§ 1409(a) and 1401(g), based on the claim that she acquired U.S. citizenship at birth through her natural father.

Based on the evidence of record, the district director determined that the applicant had not established that she had been legitimated by her father prior to his 21st birthday or acknowledged by him prior to turning 18 years of age. Accordingly, he denied the application.

On appeal, counsel asserts that the applicant was acknowledged by her father when he signed her birth certificate before a Mexican government official, thereby acknowledging her paternity in writing under oath as required by section 309(a)(4) of the Act. Counsel submits a copy of the birth certificate signed by the applicant's father. Counsel also provides an affidavit from the applicant's father to establish that he has supported her from her birth to the present time.

As the applicant was born out of wedlock to parents who never married, 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 four years old on November 14, 1986, her 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 her eligibility under section 309(a) of the Act, she must also prove that prior to her birth, her 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 she was born in Mexico on November 9, 1982 to [REDACTED] and [REDACTED]. Both parents signed the birth certificate in the presence of a Mexican registrar in Matamoros. She has also provided a certificate of citizenship for her father that demonstrates he acquired U.S. citizenship at the time of his birth. Based on the foregoing evidence, the AAO concludes that the applicant has met the requirements of section 309(a)(1), (2), and (4)(B) of the Act. It also finds the evidence of record to establish that, prior to her birth, the applicant's father was physically present in the United States or its outlying possessions for a period or periods of at least five years, all of which followed his 14th birthday. Mr. [REDACTED] social security earnings statement for the years 1969 through 2003, the copies of his pay statements for 1981-1982 and the statement provided by a former employer indicating that Mr. [REDACTED] lived and worked at the business during the years 1977-78, and 1980-1982 is sufficient to demonstrate that, prior to the applicant's birth, he was physically present in the United States for at least five years, two of which followed his 14th birthday, as required by section 301(g) of the Act.

The record, however, provides no evidence that would satisfy the requirement of section 309(a)(3) – “the father has agreed in writing to provide financial support for the person until the person reaches the age of 18 years.” On appeal, counsel submits a June 6, 2006 sworn statement from the applicant's father, in which he claims to have provided for the applicant and her mother since the applicant was born. However, this statement is unsupported by any documentation that would corroborate Mr. [REDACTED] statements regarding his support of the applicant, e.g., money transfers, receipt, bank records or statements from the applicant and her mother. Accordingly, the AAO finds the affidavit to be insufficient proof that the applicant's father agreed in writing to provide financial support for her until she reached the age of 18 years. The appeal will, therefore, be dismissed.

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 not met her burden in this proceeding.

ORDER: The appeal is dismissed.