U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: EL PASO, TX Date: MAR 03 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the former Immigration and Nationality Act; 8 U.S.C. § 1433 (2000).

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on September 1, 1971 in Mexico. The applicant was adopted by [redacted] a native-born U.S. citizen, on December 16, 1980, when she was nine years old. The applicant's biological mother, [redacted], became a U.S. citizen upon her naturalization on June 11, 1993, when the applicant was 21 years old. The applicant was admitted to the United States as a lawful permanent resident on May 25, 1976, when she was four years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

At the outset, the AAO notes that the applicant's instant Form N-600, Application for Certificate of Citizenship, is her second such application. The applicant had previously filed a Form N-600 which was denied in 2004. The AAO dismissed an appeal of that application in 2008.

The regulation at 8 C.F.R. 341.6 provides, in pertinent part, that "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration . . . ." The applicant has not submitted such a motion, nor has she provided any additional evidence that would warrant reopening of the previous decision in this case. Rather, the applicant now claims that she acquired U.S. citizenship as an out-of-wedlock child under former section 309(a) of the Immigration and Nationality Act, 8 U.S.C. § 1409(a)(1971).

The field office director evaluated the applicant's eligibility for citizenship under sections 301, 320, 321 and 321 of the Act, 8 U.S.C. §§ 1401, 14310, 1432, and 1433. The director also considered the applicability of the Child Citizenship Act of 2000, Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director concluded that the applicant did not acquire or derive U.S. citizenship under any provision of the Act because she was not born of U.S. citizen parents and because she is not the child of a parent who naturalized prior to her 18th birthday.

On appeal, the applicant now claims that she acquired U.S. citizenship under former section 309(a) of the Act, 8 U.S.C. § 1409(a)(1971), as the out-of-wedlock child of a U.S. citizen. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicable law for derivation of U.S. citizenship is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The applicant

was born in 1977. Former sections 301, 320, 321 and 322 of the Act, 8 U.S.C. §§ 1401, 14310, 1432, and 1433 (1977), are therefore applicable to this case.[1]

The applicant now maintains that she acquired U.S. citizenship as the out-of-wedlock child of a U.S. citizen pursuant to former section 309(a) of the Act, 8 U.S.C. § 1409(a)(1971). *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

Former section 309(a) of the Act allowed for the applicability of section 301(a)(7) of the Act to children of U.S. citizens where the father's paternity was established by legitimation before a child reached the age of 21 years. Section 309(a) of the Act was amended in 1986, but the amendments apply only to illegitimate children who were under the age of 18 in 1986.[2]

Section 309 of the Act, like section 301, requires at the outset that the applicant establish that she was "born . . . of" a parent who is a U.S. citizen. The applicant was adopted by her father, and is not her father's natural father.[3] Section 1131.4, Volume 7, Foreign Affairs Manual (FAM), U.S. Department of State, which states in pertinent part:

> The laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed . . . . Absent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired.

The applicant is not the biological child of a U.S. citizen.[4] Therefore, she did not acquire U.S. citizenship at birth under section 309(a) of the Act, which makes applicable section 301(a)(7) of the Act,[5] to children born out-of-wedlock.

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[1] The CCA is not retroactive, and not applicable to individuals who were over 18 years old on its effective date (February 27, 2001). CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The CCA is therefore not applicable to the applicant's case.

[2] Section 309(a) of the Act, 8 U.S.C. § 1409(a)(1986), 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.

[3] The record contains the applicant's adoption documents. The field office director also indicates that the applicant's adoptive father testified that he is her adoptive, and not natural, father.

[4] The record clearly indicates, and the applicant does not dispute, that her adoptive father is not her biological father.

[5] Section 301(a)(7) provides that the following shall be nationals and citizens of the United States at birth:

As noted in the AAO's May 28, 2008 decision, the applicant did not derive U.S. citizenship under former sections 320, 321 or 322 of the Act, 8 U.S.C. §§ 1431, 1432 and 1433, as previously in force prior to February 27, 2001. Former sections 320 and 321 of the former Act provided for acquisition of U.S. citizenship upon the naturalization of a parent prior to the child's 18th birthday. The applicant was over the age of 18 when her mother naturalized. As noted above, her adoptive father is a native-born U.S. citizen. The applicant therefore did not derive U.S. citizenship under former sections 320 or 321 of the Act.

The AAO also notes that the applicant failed to qualify for U.S. citizenship under former section 322 of the former Act because she could not establish that her application for citizenship was approved, and that she took the oath of allegiance, prior to her 18th birthday. The applicant did not apply for a certificate of citizenship before she turned 18, no such application was approved, nor did she take an oath of allegiance prior to her 18th birthday. The applicant therefore did not derive U.S. citizenship under former section 322 of the Act.

The AAO nevertheless notes that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva,* 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

> unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The USCIS Adjudicator's Field Manual at § 71.1(e) instructs that

> An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

> [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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The matter must therefore be remanded to the field office director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision.