U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

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Date: DEC 27 2011 Office: YAKIMA, WA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Sections 301(a)(7) and 309(a) of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(a)(7) and 1409(a) (1968)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Yakima, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born out-of-wedlock in Mexico on [redacted]. The applicant's father is a U.S. citizen by birth in Framingham, Massachusetts on [redacted]. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1968), based on the claim that he acquired U.S. citizenship at birth through his father.

The field office director determined that that the applicant was ineligible for a certificate of citizenship because the applicant failed to establish that he met the requirements under section 309(a) of the Act. *See Decision of the Field Office Director*, dated July 25, 2011. The application was denied accordingly. On appeal, the applicant contends that the fact that his father sent money to his mother is evidence that he acknowledged the applicant as his son. *See Form I-290B.*

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. INS,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1968. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.[1]

Former section 301(a)(7) of the Act stated that the following shall be nationals and citizens of the United States at birth:

> a person born outside the geographical limits of the United States . . . 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 . . . 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.

Additionally, because the applicant was born out of wedlock, he must satisfy the provisions set forth in former section 309(a) of the Act.[2] Former section 309(a) of the Act provided, in pertinent part:

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[1] Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

[2] The field office director incorrectly cited amended section 309(a) of the Act. Former section 309(a) of the Act applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

> The provisions of paragraphs (3), (4), (5), and (7) of section 301(a) . . . of this title shall apply as of the date of birth to a child out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Therefore, the applicant must establish that his father was physically present in the United States for no less than ten years before his birth on [redacted], and that at least five of these years were after his father's fourteenth birthday on [redacted]. Additionally, the applicant must establish that his paternity was established by legitimation before his twenty-first birthday on [redacted].

The record reflects that the applicant's birth was registered in [redacted] Mexico and that he was born out-of-wedlock and his parents never married. Since Mexico abolished the legitimate and illegitimate categories of children in 1979, children born of those unions not bound by marriage are designated as being born out of wedlock. Under Mexican law the issue as to the status of a child in such a case relates to whether parentage has or has not been established. Parentage is governed by the provisions of the civil code of each state. According to a 2004 advisory opinion from the Library of Congress (LOC No. 2004-416), parentage in Michoacan is governed by the Civil Code of Michoacan ("Code"). The Code was published on March 24, 1936 and came into force on September 13, 1936. Under the Code, all children have equal rights regardless of whether they were born within a union not bound by marriage or within a marriage. The Code provides that children born within a union not bound by marriage need to have their parentage established to have their legal rights implemented. With respect to the father, parentage is established by voluntary acknowledgment or by final judgment. Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in open court. Parentage may also be established by a subsequent marriage of the natural parents.

The record contains a Certificate of Birth for the applicant which indicates that the applicant was born to [redacted] and an unknown father and that his birth was registered in [redacted] Mexico on [redacted]. *See Certificate of Birth* [redacted] issued on June 10, 2009. The certificate of birth does not reflect that the applicant's father's name was entered at any time after the applicant's birth and the record does not contain evidence that the applicant's father acknowledged the applicant as his son by a special acknowledgment proceeding before the Civil Registry Officer, by a public notarial instrument, under a will, or by direct and open admission in open court. As such, the applicant's paternity has not been established under the requirements of the Code in [redacted], Mexico.

Alternatively, an applicant's father may also legitimate an applicant under the laws of his domicile. The record reflects that, while the applicant's father traveled extensively, he was domiciled in Massachusetts. Massachusetts law provides that an illegitimate child may be acknowledged by his or her father, but that such an acknowledgement would not serve as legitimation. *See Chapter 190, Section 7 of the Annotated Laws of Massachusetts.* As such, the applicant was not legitimated by his father in Massachusetts.

Former section 309(a) of the Act explicitly requires that paternity of a child must be "established while such child is under the age of twenty-one years by legitimation," and the applicant's paternity was not established by legitimation before he turned 21.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in former section 309(a) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.