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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 16 2013 Office: HARLINGEN, TX FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)(1979).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on February 25, 1979 in Mexico. The applicant's parents are [redacted] and [redacted] The applicant's parents were never married to each other. The applicant's birth was registered by her father, and lists both her parents' names. The applicant's father was born in Texas on December 17, 1934. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The Field Office Director concluded, in relevant part, that the applicant was not legitimated under either Mexican or Texas law, and therefore did not acquire U.S. citizenship at birth through her father. *See* Decision of the Field Office Director, dated September 6, 2012.

On appeal, the applicant, through counsel, maintains that she was legitimated pursuant to the Civil Code of the State of Tamaulipas. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. Thus, the applicant maintains that she acquired U.S. citizenship at birth through her father. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1979. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to her case.

Former section 301(a)(7) of the Act stated, in pertinent part, 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 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 record reflects that the applicant was born out of wedlock. Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon proof of legitimation prior to the age of 21. *See* Former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to

1986. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 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). The amendments further provided, however, 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.

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico indicating that she was born in 1979 to [redacted] The applicant was not legitimated under the laws of Texas.[1] At issue in this case is whether the applicant can establish that she was legitimated under the laws of the State of Tamaulipas, Mexico.

The applicable provisions of the Civil Code of the State of Tamaulipas, as in effect at the time of the applicant's birth, provided for the legitimation of a child born out of wedlock upon the marriage of the parents and, separately, for the formal acknowledgement of such a child by a father in a variety of ways, including in the official birth certificate. *See Iracheta v. Holder,* ___ F.3d ___, 2013 WL 4836087 (5th Cir. Sept. 11, 2013) (citing Library of Congress (LOC) Report 2012-008314). The Fifth Circuit explained in *Iracheta* that "acknowledged" children under the pre-1987 Civil Code of Tamaulipas were afforded "full filial rights, vis-à-vis the acknowledging parent, even before the distinction between legitimate and illegitimate children was abolished [in 1987]." *Id.* at *4-5. Thus, the court concluded that a child's paternity is established by legitimation under the Civil Code of Tamaulipas for purposes of derivative citizenship determinations where, as in this case, the child is formally acknowledged. *Id.* at * 6. The applicant's father formally acknowledged her when he registered her birth and placed his name

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[1] Section 13.21 of the Texas Family Code, in existence prior to the applicant's 21st birthday, allowed for the filing of a petition for a decree designating the father as a parent and provided that a 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 her 21st birthday. The applicant therefore was also not legitimated under the laws of the State of Texas.

on her birth certificate before the Civil Registry. She was therefore legitimated in 1979, when her birth was registered. Because she was legitimated prior to her 21st birthday, the applicant fulfilled the requirements of former section 309(a) of the Act.

The question remains whether the applicant can establish that her father was physically present in the United States for 10 years prior to 1979, five of which while over the age of 14 (after 1948). In this regard, the applicant has submitted her father's social security card, a one-year employment agreement dated in 1973, his social security earnings statement indicating employment income beginning in 1955 and through 1975, affidavits executed by the applicant and the applicant's aunt, and photographs. The affidavits' statements mostly relate to the applicant's father's presence in the United States after the applicant's birth, and are therefore irrelevant for purposes of the applicant's U.S. citizenship claim. Nevertheless, the employment and social security documents submitted establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States for ten years prior to 1979.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. The appeal will therefore be sustained.

**ORDER**: The appeal is sustained.