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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 15 2014 Office: HARLINGEN, TX [redacted]

IN RE: [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) (1960).

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 Field Office Director, Harlingen, Texas (the director) denied the Application for Certificate of Citizenship (Form N-600), and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant has filed a motion to reopen and reconsider the AAO's decision. The motion to reconsider will be granted, the prior decision of the AAO will be withdrawn, and the appeal will be sustained.

Pertinent Facts and Procedural History

The applicant was born on October 5, 1960 in Tamaulipas, Mexico. The applicant's parents, as indicated on her birth certificate, are [redacted] The applicant's parents were never married to each other. The applicant's father was born in Texas in 1907. 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 director concluded that the applicant was not legitimated and therefore did not acquire U.S. citizenship at birth through her father. On appeal, the applicant, through counsel, asserted that she was acknowledged by her father and legitimated pursuant to the Mexican Civil Code. The appeal was dismissed by the AAO, upon finding that the applicant was not legitimated pursuant to the law of the State of Tamaulipas, Mexico.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The regulations, at 8 C.F.R. § 103.5(a)(3), provide further that a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy." The applicant's motion meets the requirements of a motion to reconsider.

Applicable Law

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 1960. 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.[1]

Analysis

On motion, counsel asserts that the AAO erred in applying the provisions of the 1961 Tamaulipas Civil Code to this matter because the applicant was born in 1960, a year prior to the Code's enactment. According to a 2012 Library of Congress (LOC) report, the applicable law in Mexico relating to domestic relations issues, including legitimation, is the civil code of the states and not federal law. *See* LOC Report 2012-008314. The LOC report, at Part B, explains that prior to 1961, the 1940 Civil Code of Tamaulipas governed issues relating to domestic relations. According to the LOC, "[n]o provision was found addressing how children born out of wedlock may be acknowledged by their father or legitimated" in the 1940 Civil Code.

The Board of Immigration Appeals (BIA) explained in *Matter of Moraga*, 23, I&M Dec. 195, 199 (BIA 2001)(en banc), that a change in a country's legitimation laws must take place prior to the child reaching the age required for legitimation in the relevant provision of the Act in order for the child to benefit under the changed laws. In this case, the 1961 Tamaulipas Civil Code came into effect when the applicant was a one-year-old child. The Act requires that the applicant establish her legitimation prior to the age of 21. *See* section 309(a) of the Act. Thus, the 1961 Tamaulipas Civil Code is the relevant law for purposes of the applicant's U.S. citizenship claim.

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[1]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 was acknowledged by her father in her birth record when she was 13 years old. "'[A]cknowledgement' is substantively equivalent to 'legitimation'" when, as here, the "acknowledged child . . . acquired full filial rights with regard to the acknowledging parent." *Iracheta v. Holder*, 730 F.3d 419, 425 (5th Cir. 2013). The applicant has therefore established that she was legitimated as required by former section 309(a) of the Act.

Having established that she was legitimated, the question remains whether the applicant's was father was physically present in the United States for at least ten years between 1907 and 1960, five of which were after 1921. *See* Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7)(1960). The record contains, in pertinent part, baptismal certificates of the applicant's father and his siblings spanning from 1905 to 1912; affidavits and letters attesting to the applicant's father's presence in the United States prior to 1960; and a social security earnings print-out listing some employment income prior to 1960. The AAO finds that the record, by a preponderance of the evidence, establishes that the applicant's father was physically present in the United States as required. Accordingly, the applicant acquired U.S. citizenship at birth and is eligible for a certificate of citizenship.

Conclusion

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.

ORDER: The motion is granted, the AAO's May 16, 2013 decision is withdrawn. The appeal is sustained. The matter is returned to the Harlingen Field Office for issuance of a Certificate of Citizenship.