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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

FILE:

Office: HARLINGEN, TX

Date:

DEC 14 2006

IN RE:

Applicant:

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:

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 January 23, 1962 in Mexico. The individual identified as the applicant's late father, [REDACTED] was born on May 6, 1907 in San Angelo, Texas. The applicant's mother, [REDACTED] based on the applicant's birth certificate, was a Mexican citizen at the time of his birth and the record does not indicate that she has acquired another citizenship. The record does not establish that the applicant's parents married. Therefore, 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 he acquired U.S. citizenship at birth through his father

Based on the evidence of record, the district director determined that the applicant had failed to prove that his paternity had been established as a result of legitimation before he reached 21 years of age. Accordingly, he denied the application.

On appeal, counsel contends that the director has misread the Mexican legitimation statute and the requirements for a certificate of citizenship under section 309 of the Act. She asserts that the legal acknowledgement of the applicant by his father at the time he registered the applicant's birth satisfies the requirement of section 309(a)(4) of the Act as written acknowledgement of paternity. She cites the Supreme Court decision in *Nguyen v. INS* 533 U.S. 53 (2001) in support of her statements.

Counsel statements on appeal indicate that she is relying on the requirements of section 309(a) of the Act, as amended by the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) to establish the applicant's eligibility for a certificate of citizenship. As counsel asserts, one of the ways in which an applicant for a certificate of citizenship may establish his or her paternity under section 309(a)(4) is through his or her father's acknowledgement of paternity in writing under oath. The applicant's claim to citizenship may not, however, be considered under the amended provisions of section 309(a) of the Act. The amended provisions apply only to persons who were not yet 18 years of age on November 14, 1986, the effective date of Pub. L. No. 99-653. As the applicant was 24 years old on that date, he may not establish his paternity through written acknowledgement of paternity under oath.<sup>1</sup>

Instead, the applicant must demonstrate that he meets the requirements of the derivative citizenship provisions of section 309(a) of the Act prior to November 14, 1986. Former section 309(a) of the Act states:

(a) The provisions of paragraphs (3), (4), (5), and (7) of section 301(a), and of the paragraph (2) of section 308, 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.

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<sup>1</sup> The petitioner in *Nguyen v. INS*, born in 1969, was 17 years of age on November 14, 1986 and, therefore, eligible to benefit from the amended provisions of section 309(a) of the Act.

Accordingly, to establish that he is eligible for a certificate of citizenship under former section 301(a) of the Act, the applicant must first prove that he was legitimated, rather than acknowledged by his father, prior to his 21<sup>st</sup> birthday.

The applicant was born in Mexico. Pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico, becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The record contains no evidence that demonstrates that the applicant's parents married and thus legitimated him under Mexican law prior to his 21<sup>st</sup> birthday.

The AAO additionally finds that the applicant has failed to present any evidence to indicate that he was legitimated by his father in accordance with state law in Texas, the state of his father's birth and the state where his father lived in the United States.

The Texas Family Code provides that a Texas court may issue a decree of legitimation upon a father's compliance with paternity decree provisions set forth in § 13.23 of the Texas Family Code, as well as legal legitimation provisions set forth in § 13.2.1 of the Texas Family code. The applicant has failed to establish that his father obtained a Texas court ordered decree of paternity or that he obtained a decree of legitimation from a Texas court. The AAO thus finds that the applicant has not been legitimated by his father pursuant to the laws in Texas. In the alternative, the applicant has also failed to establish that he was legally adopted by his father.

The applicant has not demonstrated that his paternity was established through legitimation prior to his 21<sup>st</sup> birthday, as required to satisfy the requirements of former section 309(a) of the Act. Therefore, he may not establish that he acquired U.S. citizenship at birth from his U.S. citizen father under former section 301(a) of the Act. Accordingly, the appeal will 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 his burden in this proceeding.

**ORDER:** The appeal is dismissed.