U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. 3000.
Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: PHOENIX, AZ Date: DEC 14 2006

IN RE: Applicant: [redacted]

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:

SELF-REPRESENTED

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, Phoenix, Arizona 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 July 16, 1971 in Mexico. The individual identified as the applicant's natural father [redacted] was born on January 21, 1949 in Texas. The applicant's mother, [redacted] was, at the time of the applicant's birth, a Mexican citizen and the Form N-600, Application for Certificate of Citizenship, indicates that she remains a citizen of that country. The applicant's parents did not marry. 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 natural father.

Based on the evidence of record, the district director determined that the record did not establish that the applicant had been legitimated by his father prior to his 21st birthday, as required by section 309(a) of the Act, or that, prior to his birth, his father met the physical presence requirements of section 301(g) of the Act. Accordingly, he denied the application.

On appeal, counsel submits an opinion from a Mexican attorney that states the signature of the applicant's father on the applicant's original birth certificate is proof of legitimation under Mexican law. The attorney's opinion is not, however, persuasive. The AAO notes that that 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). As the applicant's parents never married, the applicant has not been legitimated by his father pursuant to the laws in Mexico. Moreover, the opinion drafted by the Mexican attorney does not comply with the regulation at 8 C.F.R. § 103.2(b)(3), which requires that foreign language documents be submitted with a full English language translation, which a translator has certified as complete and accurate, and by that certification that he or she is competent to translate from the foreign language into English.

As the applicant was born out of wedlock to parents who never married, the derivative citizenship provisions set forth in section 309 of the Act apply to this case. Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached twenty-one years of age. As of that date, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA) amended section 309, applying the changed provisions to persons who were not yet 18 years of age on November 14, 1986. As the applicant in this case was only 15 years old on November 14, 1986, his application will be considered under section 309(a) of the Act, as established by the 1986 amendments.

Section 309(a) of the Act 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.

Should the applicant establish his eligibility under section 309(a) of the Act, he must also prove that prior to his birth, his father was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which followed his father's 14th birthday, as required by section 301(g) of the Act. Honorable service in the U.S. military, employment with the U.S. Government or with certain international organizations by U.S. citizen parents may qualify as physical presence in the United States.

The applicant has submitted a December 14, 1971 registration of his July 16, 1971 birth to [redacted] and [redacted] signed by both his parents. Based on this document and the birth certificate of the applicant's father, the AAO concludes that the applicant has met the requirements of section 309(a)(1), (2) and (4)(B) of the Act. The signature of the applicant's father on the certificate registering the applicant's birth is not, as previously discussed, proof of legitimation. It is, however, an acknowledgement of paternity in writing under oath and, thereby, satisfies the requirements of section 309(a)(4)(B).

The record also contains a copy of a June 12, 2002 statement made by the applicant's father before a consular officer of the United States, acknowledging his five children, including the applicant, and agreeing to provide for their financial support until they reach the age of 18 years. However, on the date on which his father promised to support him financially until he turned 18 years of age, the applicant was 30 years old. As a result, this statement does not satisfy section 309(a)(3) of the Act and the record offers no other evidence to demonstrate that the applicant's father supported him financially prior to his 18th birthday. Accordingly, the applicant has not established his eligibility for a certificate of citizenship under section 309(a) of the Act and the appeal will be dismissed.

The record contains a copy of the February 11, 1998 earnings statement provided to the applicant's father by the Social Security Administration, which documents that, prior to 1971, he was physically present in the United States for five years, two of which followed his 14th birthday. However, as the record does not indicate that the applicant is able to establish eligibility for U.S. citizenship under section 309(a) of the Act, his father's ability to meet the physical presence requirements of section 301(g) of the Act does not qualify him for a certificate of citizenship. As noted above, section 301(g) requirements shall apply to individuals born out of wedlock only if they first demonstrate eligibility under section 309(a) of the Act.

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.