



U.S. Citizenship
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Services

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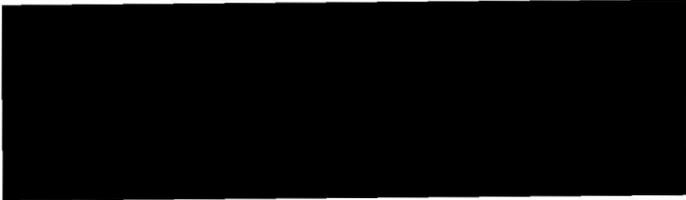
Applicant:



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, Phoenix, Arizona 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 December 17, 1969 in Mexico. The individual identified as the applicant's natural father, [REDACTED] was born on July 23, 1939 and acquired U.S. citizenship at birth. The applicant's mother, [REDACTED] was, at the time of the applicant's birth, a Mexican citizen and the record indicates that she remains a citizen of that country. The applicant's parents did not marry; the applicant's father was married to another woman from 1957 until 1981. 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's father, prior to his birth, had been physically present in the United States for a period of at least ten years. Accordingly, he denied the applicant's Form N-600, Application for Certificate of Citizenship.

On appeal, counsel contends that the evidence of record establishes that the applicant's father has lived in the United States since 1954 and reviews the documentation and affidavits submitted to prove that residence. Additionally, counsel objects on behalf of the applicant to the evidentiary requirements imposed on him as they are more rigorous than those placed on a child seeking a certificate of citizenship based on an out of wedlock birth to a U.S. citizen mother.

The AAO first considers the applicant's concerns over the differing requirements for certificates of citizenship based on the gender of the U.S. citizen parent. The AAO agrees that immigration law imposes different requirements for the acquisition of citizenship depending on whether the U.S. citizen parent is the mother or father of the applicant who has been born of wedlock. However, in 2001, the Supreme Court dealt with the issue of these gender-specific provisions finding they did not violate equal protection guarantees under the Constitution. As stated by the Court, "[t]he distinction embodied in the statutory scheme here at issue is not marked by misconception and prejudice, nor does it show disrespect for either class. The difference between men and women in relation to the birth process is a real one, and the principle of equal protection does not forbid Congress to address the problem at hand in a manner specific to each gender." *Tuan Anh Nguyen v. Immigration and Naturalization Service*, 533 U.S. 53, 121 S.Ct. 2053). Accordingly, the requirements imposed on the applicant to acquire U.S. citizenship through his father do not offer a basis on which to appeal the director's denial of the Form N-600.

The AAO now turns to the issue of whether the evidence of record establishes the applicant as qualified for a certificate of citizenship.

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 was only 16 years old on that date, his application could potentially be considered under section 309(a) of the Act, as established by the 1986 amendments. However, individuals born out of wedlock and legitimated prior to the effective date of the legislation must be considered under the

requirements of section 309(a), as they existed prior to the 1986 amendments.¹ As discussed below, the AAO finds the applicant to have been legitimated under the laws of Arizona, his father's domicile, at the time of his 1969 birth. His claim to citizenship will, therefore, be considered under the requirements of former section 309(a) of the Act.

Prior to November 14, 1986, section 309(a) of the Act stated:

(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 . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Should the applicant establish his eligibility under former 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 ten years, at least five of which followed his father's 14th birthday, as required by section 301(a)(7) 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 February 23, 1970 registration of his December 17, 1969 birth to [REDACTED] and [REDACTED] which identifies the birth as being out of wedlock. The registration, issued by the Civil Registry, Sonora State Government, Republic of Mexico, establishes that the applicant is the natural son of [REDACTED]. In that Arizona, Mr. [REDACTED]'s state of residence, considers all children to be the legitimate offspring of their natural parents and to be entitled to support and education as if born in wedlock, the applicant has established that from the time of his birth he has been the legitimated child of his U.S. citizen father under Arizona law. "Legitimacy of Children Born Out of Wedlock," Section 601, Chapter 7, Title 8, Arizona Revised Statutes, § 8-601. The applicant's birth registration is also sufficient to demonstrate that, at the time of legitimation, he was in the legal custody of his father, who is identified as "the appearing party" in the proceeding. Therefore, the applicant has met the requirements of former section 309(a) of the Act.

Having met the requirements of former section 309(a) of the Act, the applicant must also demonstrate that, prior to his birth, his father was physically present in the United States for a period of ten years, five of

¹ Amendment to the Immigration and Nationality Act Amendments of 1986 by the Immigration Technical Corrections Act of 1988, Pub. L. 100-532, 102 Stat. 2609.

which followed his father's 14th birthday. As evidence of his father's U.S. residence, the applicant submitted the following evidence in support of the Form N-600:

- Statements from Mr. [REDACTED] and the applicant's mother, both of which indicate that during their relationship, Mr. [REDACTED] lived in the United States but visited the applicant and his siblings every weekend in Mexico, beginning in 1969. His weekend visits to his children continued even after he and the applicant's mother separated in 1977. The statement from the applicant's father also states that the applicant moved to the United States to live with his father when he was 14 years of age.
- Reports issued to Mr. [REDACTED] by the Social Security Administration (SSA), including an "Earnings Record – P.I.A. Determination" for the years 1955 through 1977 and an "Itemized Statement of Earnings" from January 1959 through December 1967." The P.I.A. (primary insurance amount) determination report was issued in connection with a disability claim filed by Mr. [REDACTED] in 1980 and reports income over a period of 13 years: 1955 - \$26.36; 1956 - \$15.23; 1958 - \$31.94; 1959 - \$887.70; 1960 - \$779.74; 1961 - \$2,060.07; 1962 - \$3,524.76; 1963 - \$2,997.91; 1964 - \$2,290.87; 1965 - \$4,018.36; 1966 - \$5,493.00; 1967 - \$4,987.37; 1968 - \$5,029.96; and 1969 - \$5,205.55. The SSA earnings statement reports lesser amounts of income by employer, beginning in 1959 and continuing through 1967.
- An application filed by Mr. [REDACTED] in 1980 seeking social security benefits for the applicant and two siblings, and a 1981 letter from the Social Security Administration to the applicant's mother related to those benefits.
- Records indicating that Mr. [REDACTED] attended an unidentified English-speaking school from September 7, 1954 until April 12, 1955 and from the beginning of the 1955 school year until December 8, 1955, a total of 10-11 months. Counsel has identified the school as [REDACTED] in Douglas, Arizona.
- Mr. [REDACTED] 1957 marriage license to [REDACTED] which reports the groom's address as Douglas, Arizona.
- Statements from three of Mr. [REDACTED] sisters, stating that he has lived in the United States since 1954; a statement from Mr. [REDACTED] s ex-wife stating that she and her husband resided in Douglas, Arizona from 1957 until 1969, when they separated; and statements from three of Mr. [REDACTED] daughters from his marriage indicating they lived with their parents in Douglas, Arizona until their parents' separation in the late 1960s.

On appeal, counsel submits the following additional evidence related to the applicant's claim to citizenship:

- A statement from Dr. [REDACTED] Superintendent of the Douglas Unified School District, which reports that the [REDACTED] is

located in Douglas, Arizona, and another copy of Mr. [REDACTED]'s school records, affixed with a seal that is not legible. Dr. [REDACTED] also provides a statement in which he states that he has known Mr. [REDACTED]'s family since 1956, attending school with Mr. [REDACTED]'s brother and that he has known Mr. [REDACTED] have been a resident of Douglas, Arizona and surrounding areas for the past 30 years.

- Arizona birth certificates for five of Mr. [REDACTED]'s children: [REDACTED] born on November 10, 1957; [REDACTED] born on September 12, 1959; [REDACTED] and [REDACTED] born on October 9, 1960; and [REDACTED] born on December 15, 1962.
- An employment record issued on October 17, 1989 by [REDACTED], Inc. in Elfrida, Arizona, listing the amount of money earned by Mr. [REDACTED] during the years 1974 through 1982. This same record also indicates that Mr. [REDACTED] worked for this same employer in the 1960s, but that the records for this time period are not "readily available." Accompanying the employment record is a statement from Mr. [REDACTED]'s employer [REDACTED] who indicates that prior to 1974, when he purchased [REDACTED]s, he worked there as an accountant, beginning in 1962. He asserts that Mr. [REDACTED] was employed at [REDACTED]'s in the mid-1960s and that he continued to work there seasonally until he lost his arm in an accident in 1979. He further indicates that the firm's employment records were stolen from his home and that he is unable to verify employment through documentation for any employee prior to 1975.
- A statement from [REDACTED] who indicates she was employed as a bookkeeper at [REDACTED] Inc. from 1967 to 1984. She asserts that Mr. [REDACTED] was working at [REDACTED]'s when she began her employment and worked there until he injured his arm, and that she has known him from approximately 1967 until the present.
- A statement from [REDACTED] who states that he attended [REDACTED] School with Mr. [REDACTED] in 1955 and that, in 1958, he moved to Tucson with him to work at a charcoal company, returning to Douglas, Arizona on weekends. He asserts that Mr. [REDACTED] moved back to Douglas in 1960, but that he saw him on a weekly basis between 1960-1970. Mr. [REDACTED] states that Mr. [REDACTED] began working at a cotton gin in [REDACTED] with [REDACTED] brother in approximately 1960 and that they also worked in the fields on the weekends during this same period. He contends that Mr. [REDACTED] lived in Douglas, Arizona from at least the late 1950s through the 1970s.
- A declaration from [REDACTED], who is employed by the [REDACTED] School District in Douglas, Arizona, which states that he has lived in Douglas since 1949 and knows that Mr. [REDACTED] lived in Douglas from 1954 until he moved to Elfrida, Arizona in approximately 1968.

The applicant has submitted documentary evidence that establishes his father was employed in the United States during the decade that preceded the applicant's 1969 birth. While the level of income recorded for

these years does not necessarily establish that Mr. [REDACTED] employment was year-round, his earnings record, when considered in combination with other documentation and the statements of Mr. [REDACTED] former colleagues and members of his community, is sufficient to establish that, prior to the applicant's birth, he was physically present in the United States for a period of ten years, five of which followed his 14th birthday. While the AAO notes certain inconsistencies in the dates provided in the statements from Mr. [REDACTED] former associates, it does not find these inconsistencies to prevent the applicant from establishing his father's presence in the United States for the requisite period of time prior to his birth.² Accordingly, the appeal will be sustained.

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 sustained.

² Although its conclusions do not rely on this information, the AAO also notes that the record contains a copy of Mr. [REDACTED] Form N-600, which indicates that, at the time he was issued his certificate of citizenship in 1966, he was found to have met the citizenship retention requirements of the Nationality Act of 1940, which applied retroactively to Mr. [REDACTED]. To have acquired U.S. citizenship through his U.S. citizen father in 1966, Mr. [REDACTED] would have been required to establish five years of continuous physical presence in the United States between 14 and 28 years of age.