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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: HARLINGEN, TX

Date:

2010 02 2007

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under sections 309 and 301 of the former Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

ON BEHALF OF APPLICANT:

[REDACTED]

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on January 8, 1966. The applicant's father, [REDACTED], was born in Texas on September 27, 1904 and was a U.S. citizen. The applicant's mother, [REDACTED], was born in Mexico and was not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director concluded the applicant had failed to establish that she had been legitimated by her father prior to attaining the age of 21. The application was denied accordingly.

On appeal, the applicant submits a brief contending that the district director erred in finding that she had not been legitimated by her U.S. citizen father. The applicant claims that her father legitimated her by appearing before the civil registry and registering her birth.

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant in the present matter was born in 1966. Section 301(a)(7) of the former Act, the predecessor to current section 301(g), therefore applies to the present case.

Section 301(a)(7) of the former Act states 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) 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 . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

In order to meet the definition of "child" prior to November 14, 1986, section 309 of the former Act required that paternity be established by legitimation while the child was under 21. Subsequent amendments made to the Act in 1986, provided that a new section 309(a) would apply 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 provided that the former section 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and 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.*

In the present matter, the applicant was born prior to November 14, 1986, and she was over the age of 18 on November 14, 1986. The AAO will therefore assess the applicant's claim pursuant to section 309(a) requirements under the former Act. Accordingly, the applicant must establish that she was legitimated by her father prior to her 21st birthday, under the laws of Mexico or Texas.

The record contains a Mexican birth certificate reflecting that the applicant's father is [REDACTED]. The record does not contain any document reflecting that [REDACTED] formally acknowledged the applicant, provided financial support, or otherwise legally recognized the applicant.

The AAO notes that the Mexican Civil Code, articles 3 and 4, provides that official registration and acknowledgment of a child establishes paternity over a child born out of wedlock. The AAO finds, however, that pursuant to article 314 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 Reyes*, 16 I&N Dec. 436 (BIA 1978). The applicant concedes that his parents were never married. *See Applicant's Brief on Appeal at 2.* Contrary to counsel's contention, *Matter of Hernandez*, 14 I&N Dec 608 (AG 1974), does not hold that a father's appearance before the civil registry and registration of birth under Article 74 of the Civil Code of Tamaulipas amount to legitimation in Mexico. The holding in *Matter of Hernandez* relates to the validity of a common-law marriage under Article 70 of the Civil Code of Tamaulipas. The applicant in this case does not claim her parents were in a common-law marriage. *Matter of Hernandez* is therefore inapposite. The applicant has therefore failed to establish that her parents married prior to her 21st birthday, and consequently she was not legitimated by her father pursuant to the laws in Mexico.

The AAO additionally finds that the applicant failed to establish she was legitimated by his father in accordance with legitimation laws in Texas, prior to her twenty-first birthday.

Section 13.21 of the Texas Family Code, in existence prior to the applicant's 21st birthday, provided, in pertinent part:

If a statement of paternity has been executed by the father of an illegitimate child, the father . . . may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

- (a) The 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.

Accordingly, the AAO finds that the applicant has failed to establish that she was legitimated by her father, as required by section 309 of the former Act. She is therefore ineligible to derive citizenship under section 309 of the Act, and the physical presence requirements set forth in section 301 of the former Act need not be addressed.¹

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the record includes social security records pertaining to the applicant's father. These records would not be sufficient to establish that the applicant's father was physically present in the United States for the period required under section 301(a)(7) of the former Act.