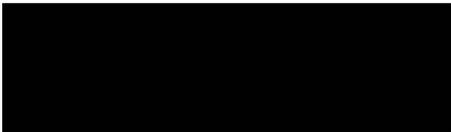


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**U.S. Citizenship
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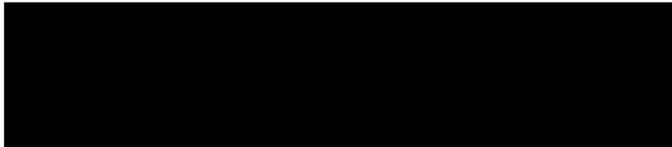
Applicant:



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 dismissed.

The record reflects that the applicant was born on May 4, 1970 in Mexico. The individual identified as the applicant's natural father, [REDACTED] was born on July 30, 1930 in Mesa, Arizona. 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 or acknowledged by his father prior to his 18th 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.

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 16 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.

On appeal, counsel contends that the applicant's birth certificate issued on March 1, 1971 establishes that [REDACTED] acknowledged the applicant when he was less than one year old. He also asserts that the affidavits submitted by [REDACTED] and [REDACTED] sister, [REDACTED] as well as [REDACTED] social security earnings statement for the years 1937 through 1987 establish his presence in the United States for the requisite period of time.

The record includes a copy of the March 1, 1971 registration of the applicant's May 4, 1970 birth to [REDACTED] and [REDACTED]. In pertinent part, it states:

In the City of HEROICA, CABORCA, SONORA at 10:30 hours on the 01 day of the month of March of the year Nineteen-hundred-SEVENTY-ONE . . . there appeared MR. [REDACTED] . and he presented to be registered a live baby BOY who was born in HIS HOME IN THIS CITY He is the LEGITIMATE [sic] SON of the declarer This act was read to the declarer and witnesses who, being in agreement with its contents signed if they knew how to do so

Based on this document, the AAO concludes that the applicant was acknowledged by his natural father at the time he registered his birth. The signature of the applicant's father on the certificate registering the applicant's birth is an acknowledgement of paternity in writing under oath and, thereby, satisfies the requirements of section 309(a)(4)(B).

The AAO now turns to the second basis for the district director's denial of the applicant – the failure of the applicant to establish his father's presence in the United States for the requisite period of time prior to his birth. The district director's denial of the application indicated that section 301(g) of the Act required [REDACTED] to have been physically present in the United States for a total of ten years, five of which followed his 14th birthday. However, as previously noted, section 301(g) of the Act, as amended in 1986, requires that [REDACTED] have been physically present in the United States for only five years prior to the applicant birth, two of which followed his 14th birthday.

To establish the length of his father's presence in the United States prior to his birth, the applicant submits affidavits sworn by [REDACTED] and his aunt, [REDACTED] [REDACTED] states that he lived in the United States for the first five years of his life, when his family moved to Mexico, and that he returned to the United States when he was 18 years of age living initially with an uncle in California and then moving to Tucson, Arizona. He states that he received a social security number in 1955, which is supported by the record. [REDACTED] affidavit also states that [REDACTED] moved with their family to Mexico in 1935 and that he returned to the United States when he was 18 years old, living first in California and then in Tucson, Arizona. She also states that in 1950 she returned to the United States to live in Phoenix, Arizona and that her brother has lived in Arizona from 1955 until the present. In support of these affidavits, the applicant has submitted a social security earnings summary statement for his father indicating that between

1951 and 1987, he earned nearly \$114,500. However, the only annual income reported for [REDACTED] between 1951 and 1970, the year of the applicant's birth, is \$120 in earnings for 1955. In that the social security earnings statements submitted by the applicant do not, as counsel claims, support the affidavits sworn by his father and aunt, the applicant has failed to demonstrate that his father was physically present in the United States for a five year period prior to his birth, as required by section 301(g) of the Act. Absent any supporting documentation, the statements of the applicant's father and aunt are insufficient proof of his father's residence in the United States. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO also finds the evidence in the record to be insufficient to establish that [REDACTED] supported the applicant financially until he reached 18 years of age, the requirement at section 309(a)(3) of the Act. [REDACTED] affidavit indicates that he provided for the applicant economically. The record includes statements from the directors of the primary and secondary schools attended by the applicant, which indicate that [REDACTED] was actively involved in his son's education. It also contains an affidavit sworn by two individuals who state that they have known Mr. [REDACTED] and the applicant for all of their lives – [REDACTED] and [REDACTED] and that [REDACTED] has taken care of the applicant since his birth, including covering the expenses related to his "nourishment, school education, and all medical services." However, the statements from the school directors address only [REDACTED] involvement in his son's education. They do not indicate that he was financially responsible for the applicant's education. The affidavit sworn by [REDACTED] and [REDACTED], although it states that [REDACTED] did provide financially for the applicant, also fails to satisfy the requirement at section 309(a)(3) of the Act. The affidavit does not establish the basis for [REDACTED] and [REDACTED] knowledge of [REDACTED] financial arrangements concerning the applicant. Moreover, there is no evidence in the record that confirms the affiants' claims. In the absence of any type of supporting documentation, the submitted affidavit is insufficient proof that [REDACTED] provided for the applicant financially until his 18th birthday. For this reason as well, 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 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.