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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: FT. SMITH, ARKANSAS Date: **NOV 27 2007**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 309(b) and 301 of the Immigration and Nationality Act; 8 U.S.C. §§ 1409(b) and 1401.

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, New Orleans, Louisiana¹, 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 March 7, 1958 in Mexico. The applicant's father, Jesus [REDACTED] was born in Laredo, Texas on January 2, 1926. The applicant's mother is [REDACTED] a citizen of Mexico. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship pursuant to sections 309(b) and 301 of the Immigration and Nationality Act, 8 U.S.C. §§ 1409(b) and 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's citizenship claim finding that the applicant was not legitimated as required prior to the age of 21. On appeal, the applicant claims that his parents were in a common-law marriage and that he therefore acquired citizenship at birth through his father. Alternatively, the applicant maintains that he was properly legitimated. The appeal is accompanied by an affidavit executed by the applicant's father.

"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 this case was born in 1958.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Section 309(b) of the Immigration and Nationality Act, 8 U.S.C. § 1409(b), as enacted in 1952, provided, in relevant part,

(b) ... the provisions of section 301(a)(7) shall apply to a child born out-of-wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7), provided, in turn,

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 . . .

The applicant claims that he was a legitimate child or, alternatively, that he was legitimated by virtue of his parents' common law marriage. The AAO notes that, according to the affidavit submitted by the applicant's father, he was legally married to Francisca Barrera when he began co-habiting with the applicant's mother and remained so until her death in 2001. *See Applicant's Father's Affidavit*. The applicant therefore cannot establish that his parents were in a valid common-law marriage when he was born. The AAO finds that the applicant was therefore born out of wedlock.

¹ The AAO notes that the matter has since been transferred to the USCIS Field Office Director in Ft. Smith, Arkansas.

The applicant must therefore establish that he was legitimated, as required by section 309 of the Act.

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's parents were never married. The AAO notes that under *Matter of Hernandez*, 14 I&N Dec 608 (AG 1974), common-law marriages are recognized if entered into while Article 70 of the Civil Code of Tamaulipas was in effect. The AAO determines, however, that the applicant's parents did not enter into a common-law marriage because, according to the applicant's father's own statement, he was and continued to be married to [REDACTED]. The applicant has therefore failed to establish that his parents married prior to his 21st birthday, and consequently he was not legitimated by his father pursuant to the laws in Mexico.

The AAO additionally finds that the applicant failed to establish he was legitimated by his father in accordance with legitimation laws in Texas, prior to his 21st 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 he was legitimated by his father, as required by section 309 of the former Act. He 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.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative

and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

The AAO finds that the applicant has failed to meet his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.