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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: SAN ANTONIO, TX

Date:

**FEB 13 2008**

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Sections 309 and 301 of the 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, San Antonio, Texas, 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 January 29, 1970, in Mexico. The applicant's father, [REDACTED] was born on December 22, 1941 in Eagle Pass, Texas, and he is a United States citizen. The applicant's mother, [REDACTED] was born in Mexico and she is not a U.S. citizen. The applicant's parents were never married to each other. The applicant presently seeks a certificate of citizenship pursuant to sections 309 and 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her father.

The district director found that the applicant had failed to establish that [REDACTED] was her natural father and that she was ineligible for a certificate of citizenship under section 309 of the Act. The application was denied accordingly.

On appeal, the applicant submits a brief and results of a DNA test establishing her blood relationship with [REDACTED]. The applicant, through counsel, claims that her baptismal certificate and a municipal court certificate in the record establish that her father acknowledged her and provided her financial support prior to her 18<sup>th</sup> birthday.

Because the applicant was born out of wedlock, derivative citizenship provisions set forth in section 309 of the Act apply to her case. Prior to November 14, 1986, section 309 of the former Act required that a father's paternity be established by legitimation while the child was under twenty-one. Amendments made to the Act in 1986, provided that a new section 309(a) applied 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). In the present case, the applicant was 16 years-old on November 14, 1986. Her case will therefore be considered pursuant to the provisions of section 309(a) of the amended Act.

Section 309 of the amended Act states in pertinent part that:

- (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.

The record reflects that the applicant is the biological daughter of [REDACTED] a native-born U.S. citizen. The AAO therefore finds that applicant has fulfilled the requirements of section 309(a)(1) and (2) of the Act.

The AAO finds, however, that the applicant has failed to establish that her father agreed in writing to provide financial support until she reached the age of 18 or that she was legitimated, acknowledged under oath, or that paternity was established by adjudication of a competent court. The applicant therefore has not fulfilled the requirements of section 309(a)(3) and (4).

The AAO notes that the record contains evidence that the applicant's father may have in fact provided financial support while she was under 18. The record does not, however, contain any evidence that the applicant's father agreed in writing to provide financial support as required by section 309(a)(3) of the Act. Likewise, the record contains some evidence that the applicant's father recognized the applicant as his child. Nevertheless, there is no evidence in the record indicating that the applicant was legitimated,<sup>1</sup> acknowledged in writing under oath, or that paternity was adjudicated by a competent court as required by section 309(a)(4).

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 applicant in the present case has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> 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). The Texas Family Code provides that a Texas court may issue a decree of legitimation upon a father's compliance with paternity decree provisions set forth in § 13.23 of the Texas Family Code, as well as legal legitimation provisions set forth in § 13.2.1 of the Texas Family code. The applicant's parents did not marry, nor did her father obtain a decree of legitimation. The AAO thus finds that the applicant was not legitimated by her father pursuant to the laws in Mexico or the State of Texas.