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U.S. Citizenship  
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Services

identifying information related to  
prevent clearly unwarranted  
invasion of personal privacy

E-2

[REDACTED]

FILE:

[REDACTED]

Office: HARLINGEN, TX

Date:

JUL 08 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

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 came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on January 8, 2007. The matter will be reopened *sua sponte*, the appeal will be sustained and the application approved.

The record reflects that the applicant was born on November 9, 1982 in Mexico. The individual identified as the applicant's natural father, [REDACTED], acquired U.S. citizenship at his birth on July 2, 1942. The applicant's mother [REDACTED], was a citizen of Mexico at the time of the applicant's birth and the record does not indicate that she has acquired another citizenship. The applicant's parents never married. The applicant seeks a certificate of citizenship pursuant to sections 309(a) and 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409(a) and 1401(g), based on the claim that she acquired U.S. citizenship at birth through her natural father.

Based on the evidence of record, the district director determined that the applicant had not established that she had been legitimated by her father prior to his 21<sup>st</sup> birthday or acknowledged by him prior to turning 18 years of age. Accordingly, he denied the application.

On appeal, counsel asserted that the applicant was acknowledged by her father when he signed her birth certificate before a Mexican government official, thereby acknowledging her paternity in writing under oath. Counsel submits a copy of the birth certificate signed by the applicant's father. The applicant thus claims that she was legitimated, and therefore acquired U.S. citizenship at birth pursuant to section 309 of the Act.

The AAO initially found that the applicant had indeed been legitimated prior to her 18<sup>th</sup> birthday, but determined that she had not acquired U.S. citizenship under section 309 of the Act as amended on November 14, 1986 because her father had not agreed in writing to provide her with financial support until she reached the age of 18 years.<sup>1</sup>

The question now before the AAO is whether the former section 309 of the Act, which only required that the father's paternity be established by legitimation before a child reached 21 years of age, applies to the instant case. The AAO finds that it does.

The 1986 amendments to section 309 of the Act indeed apply to persons who had not attained 18 years of age as of the November 14, 1986, date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Thus, former section 309(a) applied to any individual

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<sup>1</sup> 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.

who had attained eighteen years of age as of November 14, 1986. The amendments further provided, however, 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.*

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes she was born in Mexico on November 9, 1982 to [REDACTED] and [REDACTED]. Both parents signed the birth certificate in the presence of a Mexican registrar in Matamoros. According to a 2004 Library of Congress (LOC) opinion, parentage in the State of Tamaulipas, Mexico can be established, *inter alia*, by acknowledgement of a child on the birth record. *See* LOC Opinion 2004-416.<sup>2</sup> The AAO must conclude that the applicant was legitimated in 1982, when her birth was registered by both her parents. As such, the AAO finds that former section 309(a) of the Act applies to her case, and that because she was legitimated prior to her 21<sup>st</sup> birthday, the applicant acquired U.S. citizenship pursuant to section 309(a) of the former Act.<sup>3</sup>

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 met her burden in this proceeding. **The appeal will, therefore, be sustained.**

**ORDER:** The appeal is sustained and the application approved.

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<sup>2</sup> The AAO notes that the LOC opinion indicates that the Civil Code of the State of Tamaulipas came into force on February 1, 1987, but that it applies retroactively to children born prior to its enactment unless its retroactive effect would be detrimental to the child.

<sup>3</sup> The AAO previously found that the applicant's father met the citizenship and physical presence requirements of section 301(g) of the Act.