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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

OFFICE: EL PASO, TX

DATE:

JUL 28 2008

IN RE:

APPLICANT:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under section 309(a) of the former and amended Immigration and Nationality Act, 8 U.S.C. § 1409(a).

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, El Paso, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form N-600 application will be denied.

The applicant was born in Mexico on [REDACTED]. The applicant's natural mother is not a U.S. citizen. The record reflects that the applicant's natural father [REDACTED] was born in New Mexico on December [REDACTED], and that he was a U.S. citizen. The applicant's natural parents did not marry.¹ The applicant was adopted in Mexico by [REDACTED] and his wife, on July 14, 1975. The applicant presently seeks a Certificate of Citizenship pursuant to section 309(a) of the former Immigration and Nationality Act (the former Act), and section 309(a) of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1409(a), based on the claim that he acquired U.S. citizenship at birth through his natural father.

The field office director determined that adoption of the applicant by [REDACTED], did not satisfy the legitimation requirements contained in section 309(a) of the former Immigration and Nationality Act (the former Act) and section 309(a) of the Act, as amended.² **The Form N-600 was denied accordingly.**

Through counsel, the applicant asserts on appeal that his adoption by his natural father created a legal parent-child relationship under Texas law, and thus served to legitimate him for purposes of acquisition of citizenship at birth section under section 309(a) of the former Act. The applicant notes that his natural father died in 1983, before the applicant turned eighteen, and the applicant asserts that written financial support requirements contained in section 309(a)(3) of the Act are therefore not applicable to his case. The applicant indicates that requirements in section 309(a) of the Act that his natural father legitimate him prior to his eighteenth birthday should be similarly disregarded on the basis that his father died prior to the applicant's eighteenth birthday. In addition, the applicant indicates that his natural father held him out publicly as his son, and he asserts that he should therefore be recognized as a legitimate child, as was done in *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005.) The applicant asserts further that a strong presumption exists that his Mexican adoption proceedings served to legitimate him in Mexico. The applicant concludes that the requirements contained in sections 309(a) of the former and amended Acts have been met, and that he therefore qualifies for U.S. citizenship.

"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.) Section 309(a) of the former and present Acts apply to acquisition of citizenship at birth claims made by persons born out of wedlock.

Prior to November 14, 1986, section 309(a) of the former Act required that paternity be established by legitimation while the child was under twenty-one. Amendments made to the former Act in 1986, provided that a new section 309(a) would apply to persons who had not attained eighteen 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, with respect to whom

¹ The record reflects that the applicant's natural mother is [REDACTED] stepdaughter.

² In the present matter, the field office director accepted DNA evidence as proof of [REDACTED] paternity over the applicant. It was also accepted that [REDACTED] died in 1983, when the applicant was thirteen.

paternity had been established by legitimation prior to November 14, 1986. Any individual at least fifteen years of age, but under the age of eighteen as of November 14, 1986, could be considered under both section 309(a) of the former Act and section 309(a) of the amended Act provisions. *See* Section 13, of the INAA. *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 fifteen years old on November 14, 1986. Accordingly, both section 309(a) of the former Act and section 309(a) of the amended Act provisions apply to his acquisition of U.S. citizenship at birth claim.

Section 309(a) of the former Act provided in pertinent part that:

The provisions of paragraphs . . . (7) of section 301(a) . . . of this title shall apply as of the date of birth to a child out-of-wedlock on or after the effective date of the Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

Section 309(a) of the Act, as amended, provides in pertinent part that:

The provisions of paragraphs . . . (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.

Section 301(g) of the Act, as amended, 8 U.S.C. § 1401(a)(7), 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 five years, at least two of which were after attaining the age of fourteen years.

The AAO notes that the statutory language contained in sections 301 of the former and amended Acts “[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child.” *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001). The applicant must therefore qualify under this section as the natural legitimated child of his father.

The applicant asserts, through counsel, that he was legitimated by his natural father prior to his eighteenth birthday. Specifically, the applicant asserts that: 1) his adoption by his natural father served to create a legal parent-child relationship under Texas law, and thus served to legitimate him; 2) financial support requirements contained in section 309(a)(3) of the Act are disregarded because the applicant’s father died prior to his eighteenth birthday, and that section 309(a)(4) of the Act requirements that his natural father must legitimate the applicant prior to his eighteenth birthday should be similarly disregarded because the applicant’s father died prior to the applicant’s eighteenth birthday; 3) his natural father held him out publicly as his son, and that the applicant should therefore be recognized as a legitimate child, as was done in *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005); 4) a strong presumption exists that the applicant’s Mexican adoption proceedings legitimated him in Mexico.

The AAO finds all of the applicant’s assertions to be unconvincing. The applicant provided no corroborative evidence to establish that his adoption served to legitimate the applicant in Mexico. Moreover, the AAO notes numerous legal findings that a child born out of wedlock in Mexico becomes legitimated only upon the civil marriage of his or her natural parents. See *Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949), *Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974), and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). In the present matter the applicant’s natural parents never married.

With regard to the applicant’s second assertion, the AAO notes that section 309(a)(3) of the Act specifically provides for a death-related exception to written financial support requirements by stating that, “the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18. . . .” No such death-related exception is provided for the legitimation requirement contained in section 309(a)(4)(A) of the Act, and the applicant provides no legal support for his assertion that clear legitimation requirements contained in section 309(a)(4)(A) of the Act should be disregarded because the applicant’s father died prior to his eighteenth birthday.

The indication that California State paternity and legitimation laws, discussed in the U.S. Ninth Circuit Court of Appeals case, *Solis-Espinoza v. Gonzales*, should be applied to the present Texas State jurisdiction case is also without legal basis. The California law discussed in the *Solis-Espinoza v. Gonzales* case allowed a father to legitimate a child by publicly acknowledging the child as his own, and receiving the child as such into his family, with the consent of his wife, if he is married. California State law is not controlling in the present Texas State case. Moreover, as discussed below, Texas State paternity and legitimation laws differ materially from the California State law discussed in the *Solis-Espinoza v. Gonzales* decision.

The applicant asserts that Section 160.201(b)(4) of the Texas Family Code provides that a father-child relationship is established by adoption of the child by the man.³ The applicant asserts, on this basis, that he was legitimated by his natural father by virtue of his adoption by [REDACTED].

The applicant asserts that he was also legitimated by his natural father under section 160.204(5) of the Texas Family Code, which states that a man is presumed to be the father of a child if:

During the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own.

With regard to section 160.204(5) of the Texas Family Code, the AAO notes that the applicant's birth certificate contains no paternal information. Moreover, statements made by the applicant's natural mother, and contained in the record, reflect that [REDACTED] did not publicly acknowledge the applicant as his natural child to his wife or family until shortly before he died in 1983. The statements and the applicant's adoption date, reflect further that the applicant lived with his natural mother in Mexico until he was adopted at the age of five. The provisions contained in section 160.204(5) of the Texas Family Code therefore do not apply to the applicant's case.

The AAO notes further that, in addition to the general parent-child relationship provisions contained in section 160.201(b)(4) of the Texas Family Code, the Code contains separate and specific paternity and legitimation laws pertaining to children born out of wedlock.

Section 13.21 of the Texas Family Code, as it existed prior to the applicant's twenty-first birthday (now Texas Family Code section 160.302 et seq.), provided in pertinent part that:

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

³ Section 160.201(b)(4) of the Texas Family Code provides that a father-child relationship is established between a man and a child through:

- 1) an un rebutted presumption of the man's paternity of the child under Section 160.204;
- 2) an effective acknowledgement of paternity by the man under Subchapter D, unless the acknowledgement has been rescinded or successfully challenged;
- 3) an adjudication of the man's paternity;
- 4) the adoption of the child by the man. . . .

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 Court of Civil Appeals of Texas, Corpus Christi, indicated in its decision, *In the Interest of K*, 520 S.W. 2d 424, 426-427 (Tex. Civ. App. 1975) that section 13.01 of the Texas Family Code (in effect at the time of the applicant's birth and prior to his twenty-first birthday):

[A]ffords two procedures for the voluntary legitimation of a child. . . . Under paragraph (a) of s 13.01, the petition may be granted if a legally sufficient statement of paternity is submitted with the consent of either the mother or the managing conservator and consent of the court. Under paragraph (b), a legally sufficient statement of paternity must first be filed with the State Department of Public Welfare, and when that is done, a petition may be filed for legitimation of the child; the statement of paternity must be filed with the petition; a decree shall then be entered declaring the child to be the legitimate child of the person executing the statement of paternity, provide the consent is obtained of either the mother, the managing conservator, or the court.

[I]t was not the intention of the Legislature, in enacting Chapter 13, of the Code to give the father of a child born out of lawful wedlock any absolute rights to establish a parent-child relationship between him and the child, but the intention was to make it legally possible for the establishment of such a relationship, subject to the consent of either the mother or the managing conservator, and the court, or in the alternative in the event a statement of paternity is first filed with the State Department of Public Welfare, subject to the consent of either the mother, the managing conservator or the court. . . .

The record in the present matter does not contain a Texas court decree reflecting that the applicant's natural father took any of the required actions to legitimate the applicant under sections 13.01 and 13.21 of the Texas Family Code. Accordingly, the AAO finds that the applicant failed to establish that he was legitimated by his natural father in Texas. The applicant thus failed to meet the legitimation requirements contained in sections 309(a) of the former and amended Acts. The additional requirements set forth in sections 301 of the former and amended Acts need therefore not be addressed.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in the present matter. The appeal will be therefore be dismissed, and the Form N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.