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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: MAR 18 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under sections 309 and 301 of the former 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, Harlingen, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be rejected.

The record reflects that the applicant was born in Matamoros, Mexico on March 16, 1964. The applicant's father, [redacted], was born in Texas on March 22, 1936, and he is a U.S. citizen. The applicant's mother [redacted] was born in Mexico and is not a U.S. citizen. The record reflects that the applicant's parents did not marry each other. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded the applicant had failed to establish that he had been legitimated by his father prior to attaining the age of 21. The application was denied accordingly.

On appeal, the applicant submits a brief contending, in relevant part, that the district director erred in finding that he had not been legitimated by his U.S. citizen father. The applicant claims that he was legitimated because his father's name appears on his birth certificate. The applicant further claims that his application should be granted because his siblings' citizenship claims were approved.

Pursuant to the regulations at 8 C.F.R. § 341.6, "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration . . . ."

The AAO notes that the applicant's previously filed Forms N-600, Application for Certificate of Citizenship, were denied, and that one was appealed and dismissed by the AAO on May 25, 2004. The instant application must therefore be rejected pursuant to 8 C.F.R. § 341.6.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO notes that the applicant has not provided any additional evidence or argument that would warrant reopening or reconsideration of the AAO's May 25, 2004 decision in this case. There is therefore no basis for treating the instant application or appeal as a motion to reopen or reconsider.

As noted in the May 25, 2004 decision, section 301(a)(7) of the former Act, the predecessor to current section 301(g), applies to the present case. Because the applicant was born out of wedlock, section 309 of the Act, 8

U.S.C. § 1409, applies to his case as well. The applicant must establish that he was legitimated by his father prior to his 21st birthday, under the laws of Mexico or Texas.[1]

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 concedes that his parents were never married. *See e.g.* Form N-600, Application for Certificate of Citizenship. The applicant has therefore failed to establish that he was legitimated in accordance with the laws of Mexico.[2]

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. The record in the present case does not contain a court decree indicating that the applicant's father took any formal action to legitimate the applicant under section 13.21 of the Texas Family Code, prior to his 21st birthday.[3]

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.[4] 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.[5]

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[1] In order to meet the definition of "child" prior to November 14, 1986, section 309 of the former Act required that paternity be established by legitimation while the child was under 21. Subsequent amendments made to the Act in 1986 do not apply to the applicant's case because he was then over the age of 18.

[2] The AAO notes that the applicant's father was legally married in 1954 to someone other than his mother, and he remains married to date. The applicant therefore cannot claim that his parents were in a common-law marriage.

[3] 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.

[4] The fact that the applicant's siblings have obtained Certificates of Citizenship does not, as the applicant suggests, establish that he is entitled to one as well. The AAO's review is limited to the facts and the evidence in the matter before it. The record in this matter does not demonstrate, by a preponderance of the evidence, that the applicant is eligible for a certificate of citizenship.

[5] The AAO notes that the record includes a copy of the applicant's father's selective service registration card and social security records. These documents do not establish that the applicant's father was physically present in the United States for the period required under the Act.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it … they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 has failed to meet his burden and the appeal will be dismissed. The application will be rejected.

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