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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED] Office: SAN ANTONIO

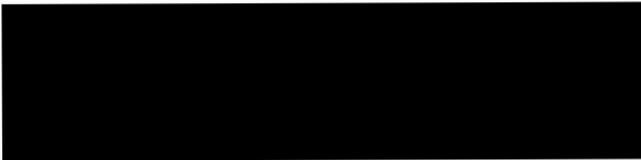
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IN RE: Applicant: [REDACTED]

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

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on March 12, 1955 in Mexico. The applicant's parents, as reflected in his birth certificate, were [REDACTED] and [REDACTED]. The applicant's father was born in Dallas, Texas on June 13, 1913. He passed away in 2002. The applicant's mother is not a U.S. citizen. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401 and 1409, based on the claim that he acquired U.S. citizenship at birth through his father.

The field director denied the application finding that the applicant had failed to provide evidence that [REDACTED] was his father, that he was a U.S. citizen, or that he had the required physical presence in the United States. On appeal, the applicant submits copies of the applicant's paternal grandparents' 1913 Divorce Decree, an excerpt from the Tamaulipas, Mexico Civil Code, a copy of his father's 1936 and 1944 divorce decrees, a copy of his father's 1946 marriage certificate, copies of his siblings' and half-siblings' birth certificate, and a copy of the applicant's sister's death certificate. The applicant maintains that his father, [REDACTED], was a native-born U.S. citizen and that he had the required physical presence in the United States.

"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 the present matter was born in 1955. Section 301(a)(7) of the former Act, the predecessor to current section 301(g), therefore applies to the present case.

Section 301(a)(7) of the former Act 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such

legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Prior to November 14, 1986, section 309 of the former Immigration and Nationality Act (former Act) required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986 included a new section 309(a) applicable 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 20 years old on November 14, 1986. His case will therefore be considered pursuant to the provisions of the former section 309(a) of the Act.

Section 309(a) of the Act, as in effect prior to the 1986 amendments, requires only that the applicant establish that he was legitimated prior to his 21st birthday.

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes he was born in Mexico on March 12, 1955 to [REDACTED] and [REDACTED]. Both parents' names appear in the birth registry, which was dated April 21, 1969. 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 2004-416.¹ The applicant was 14 years old when his birth was registered. The AAO therefore finds that he was legitimated under the laws of the State of Tamaulipas, Mexico prior to his 21st birthday.

The question remains whether the applicant can establish that his father was physically present in the United States for 10 years prior to 1955, five of which while over the age of 14. The evidence in the record, including the copies of receipts dated 1945, 1955, 1948, 1951, and 1952, the statements and documents, as well as the military records submitted all indicate that the applicant's father was physically present for the period required by section 301 of the former Act.

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 met his burden to establish that he acquired U.S. citizenship at birth through his father. The appeal will therefore be sustained.

ORDER: The appeal is sustained.

¹ 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.