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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: HOUSTON, TX

Date: **MAY 27 2009**

IN RE: [REDACTED]

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, 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 19, 1954 in Mexico. The applicant's parents, as indicated in his birth certificate, were [REDACTED] and [REDACTED]. The applicant's parents were married to each other in 1990.¹ The applicant claims that his father is a U.S. citizen, born on November 20, 1926 in California. The applicant claims that he acquired U.S. citizenship at birth through his father.

The field office director determined that the applicant did not acquire U.S. citizenship from his father because he failed to establish that he was legitimated as required by section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409.

On appeal, the applicant maintains that that the field office director erred in applying the amended version of section 309 of the Act. The applicant submits, in relevant part, his siblings' birth certificates, photographs and statements purporting to establish that his parents were living together. He further maintains that he was legitimated prior to his 21st birthday under the laws of Texas.

"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 this case was born in 1954. Section 309 of the former Act applies to the applicant's 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 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 over the age of 18 on November 14, 1986. Therefore the INAA amendments to section 309(a) do not apply to the applicant's case. The applicant is thus only required to establish that he was legitimated prior to the age of 21.

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes he was born in Mexico on January 19, 1954 to [REDACTED] and [REDACTED]. Both parents' names appear in the birth registry, which was dated March 19, 1954. 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-

¹ There is also evidence in the record indicating that the applicant's parents had a religious wedding in Mexico in 1978. Mexican law, however, requires civil registration of a marriage. Thus, the religious wedding (which was after the applicant's 21st birthday anyway) does not serve to legitimate him.

416.² The AAO must therefore conclude that the applicant was legitimated in 1954, when his birth was registered by both his parents. As such, the AAO must find that the applicant has fulfilled the requirements of former section 309(a) of the Act.

The question remains, however, whether the applicant's father was physically present in the United States for 10 years, five of which while over the age of 14.³ The evidence in the record does not establish that the applicant's father had the required physical presence in the United States. In this regard, the applicant has submitted the affidavits of [REDACTED] and [REDACTED], several identification cards, and the applicant's siblings' Mexican birth certificates. [REDACTED] indicates that the applicant's father was in the United States in 1954. [REDACTED] indicates that he met the applicant's father in 1943 in Texas and, vaguely, that he "resided and worked in different locations in Texas." He further states that the applicant's father met his mother in 1948, and that the couple had 10 children. The AAO notes that the applicant's siblings were born in Mexico from 1955 to 1975. The identification cards provided relate to dates after the applicant's birth, and therefore are not relevant to his citizenship claim.

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 AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that his father was present in the United States for 10 years prior to 1954, five of which while over the age of 14. The applicant has therefore failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² 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.

³ Section 301(a)(7) of the former Act stated, in relevant part, 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 . . .