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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: HARLINGEN, TX Date: **OCT 21 2009**

IN RE: [REDACTED]

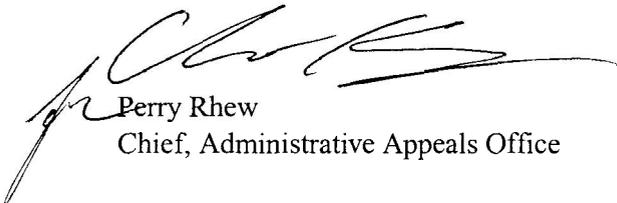
APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Harlingen, 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 December 23, 1978 in Mexico. Her birth certificate indicates that her parents are [REDACTED] and [REDACTED]. The applicant's parents were not married to each other. The applicant's father was born in the United States on December 1, 1956. He was married to [REDACTED] in Texas in 1975. The applicant seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Naturalization Act (the Act), 8 U.S.C. §§ 1401 and 1409, claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim. The director found that the applicant had failed to demonstrate that her father was physically present in the United States as required by the statute.

On appeal, the applicant submits additional evidence of her father's presence in the United States prior to her birth. The applicant further claims that her siblings have obtained certificates of citizenship through their father, based upon the same facts. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in the present matter was born in 1978. Section 301(g) of the former Act, 8 U.S.C. § 1401(g) (1978), therefore applies to the present case.<sup>1</sup>

Section 301(g) of the former Act states, in pertinent 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: *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:

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<sup>1</sup> Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

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 her 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). 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 in 1978 to [REDACTED] and [REDACTED]. 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. The AAO must conclude that the applicant was legitimated in 1979, when her birth was registered listing 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 21st birthday, the applicant fulfilled the requirements of section 309(a) of the former Act.

The question remains whether the applicant can establish that her father was physically present in the United States for 10 years prior to 1978, five of which while over the age of 14 (after 1970). In this regard, the AAO notes that the applicant has submitted her father’s birth, baptismal and confirmation certificates, voter registration information, social security earnings statement and marriage certificate. The documents submitted establish, by a preponderance of the evidence, that the applicant’s father was physically present in the United States during his early childhood and since 1970.

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 her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.