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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

APR 16 2010

FILE: [REDACTED] Office: EL PASO, TX Date:

IN RE: [REDACTED]

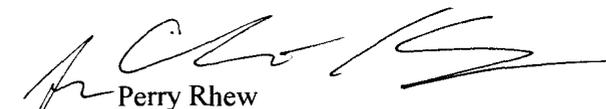
APPLICATION: Application for Certificate of Citizenship under Former Sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409 (1972).

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, 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 May 30, 1972 in Ciudad Juarez, 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 October 19, 1944. 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 she was legitimated by her father while under the age of 21 such that she could acquire U.S. citizenship pursuant to former section 309 of the Act, 8 U.S.C. § 1409 (1972).

On appeal, the applicant, through counsel, states that the results of the DNA test confirming her biological relationship to her father serve as proof of legitimation. See Letter of [REDACTED] Attached to 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, 1028 n.3 (9th Cir. 2000) (internal citations omitted). The applicant in the present matter was born in 1972. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1972), therefore applies to the present case.¹

Former section 301(a)(7) of the 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 states, in pertinent part, that for Title III naturalization and citizenship purposes:

¹ 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 21.²

The applicant has submitted a birth certificate issued by the State of Chihuahua, Mexico that establishes she was born in 1972 to [REDACTED] and [REDACTED]. According to a March 2004 advisory opinion from the Library of Congress (LOC 2004-416), the Civil Code of 1942, as amended in 1986, governs parentage in the state of Chihuahua and applies retroactively. Under the Civil Code, parentage is established with respect to the father by voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child. *See* LOC 2004-416. Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in open court. *Id.*

The applicant was legitimated in 1973, when her birth was officially registered and her birth record listed both her parents. 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 1972, five of which while over the age of 14 (after 1958). In this regard, the AAO notes that the applicant claims in her Form N-600, Application for Certificate of Citizenship, that her father resided in the United States from 1944 to 1950, and from 1965 to the present. The record contains a copy of the applicant's father's birth certificate, his sister's birth certificate (indicating that she was born in the United States in 1946), and his social security earnings statement (indicating employment income starting in 1965). 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 1965.

² 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 bears the burden of proof to demonstrate her claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The applicant in the present case has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.