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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



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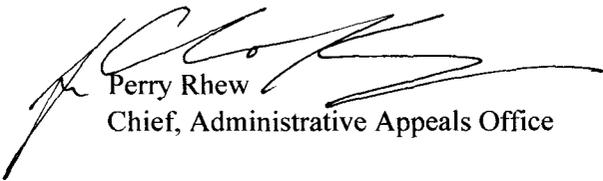
APPLICATION: Application for Certificate of Citizenship under Former Sections 301 and 309 of the
Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409 (1958).

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


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 dismissed.

The record reflects that the applicant was born on November 7, 1958 in Ciudad Juarez, Mexico. His birth was registered by his mother, [REDACTED]. A marginal note on the applicant's birth certificate indicates that he was recognized by his father, [REDACTED]. The applicant's parents were married in 1977. The applicant's father was born in the United States on November 21, 1924. The applicant seeks a certificate of citizenship pursuant to former sections 301 and 309 of the Immigration and Naturalization Act (the Act), 8 U.S.C. §§ 1401 and 1409, claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim. The director found that the applicant had failed to demonstrate that he was the biological son of [REDACTED] or that he was legitimated, or that his father had the required physical presence in the United States.

On appeal, the applicant, through counsel, states that the applicant's father has passed away and a DNA test to confirm the biological relationship is impossible to obtain. *See* Appeal Brief. The applicant further states that his father acknowledged him, as indicated in his birth certificate, and therefore legitimated him. *Id.*

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 citation omitted). The applicant in the present matter was born in 1958. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1958), therefore applies to the present case.¹

Former section 301(a)(7) of the Act stated, 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:

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 his 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 Chihuahua, Mexico that establishes he was born in 1958 and acknowledged in 1967 by his father, [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.*

Accordingly, the applicant was legitimated in 1967, when he was acknowledged by his father. In addition, the record shows that the applicant’s parents were married to each other in 1977. As such, the AAO finds that former section 309(a) of the Act applies to the applicant’s case, and that because he was legitimated prior to his 21st birthday, he fulfilled the requirements of section 309(a) of the former Act.

The question remains whether the applicant can establish that his father was physically present in the United States for 10 years prior to 1958, five of which while over the age of 14 (after 1938). In this regard, the record contains a copy of the applicant’s father’s birth certificate and his social security earnings statement. The social security statement lists the applicant’s father’s income in 1956, 1957 and 1958. The statement also reports that the applicant’s father earned a total of \$4,379 between 1937 and 1950, but that individual “yearly earnings amounts [are] not available.” The record contains no other evidence of the applicant’s father’s presence in the United States prior to the applicant’s birth.

The regulation at 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 this case, the applicant has not provided sufficient evidence to establish that his father was physically present in the United States for 10 years prior to 1958, five of which were after 1938. Thus, the applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.