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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]

AUG 11 2010

FILE:

[Redacted]

Office: LOS ANGELES, CA Date:

IN RE:

Applicant:

[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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

[Redacted Signature]

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California, 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 [REDACTED] in Mexico. The applicant's parents are [REDACTED]. The applicant [REDACTED]. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that the applicant had not established that his father was physically present in the United States as required by section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401. The application was accordingly denied.

On appeal, the applicant, through counsel, notes that the director incorrectly cited to a regulations governing naturalization applications.¹ See Counsel's Statement on Form I-290B, Notice of Appeal to the AAO. Counsel also states that the applicant provided sufficient evidence of his father's physical presence in the United States. See Motion to Reconsider and Reopen/Appeal to the Administrative Appeals Unit.

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. 2001) (internal citation 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.²

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

¹The director erroneously cited to the regulation at 8 C.F.R. § 335.7 which governs naturalization applications, not applications for certificates of citizenship. Because the AAO reviews these proceedings de novo, the director's error was harmless. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004).

² 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.

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. [REDACTED] 5, former section 309 of the 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 [REDACTED] Pub. L. No. 100-525, 102 Stat. 2609. The applicant was born in 1972. He was under the age of 18 on November 14, 1986, but he was legitimated in 1979 when his birth was registered listing Ruben Castillo as his father. Therefore, former section 309 is applicable to this case.

Under former section 309 of the Act, the applicant must establish that he was legitimated prior to the age of 21. Former section 309 of the Act, 8 U.S.C. § 1409 (1972). 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 applicant's father's name appears in his birth certificate. In addition, the applicant's parents were married to each other in 1982. The applicant therefore was legitimated prior to the age of 21.

The question remains whether the applicant can establish that his father was physically present in the United States for 10 years prior to 1972, five of which were after the age of 14 (after 1961), as required under former section 301(a)(7) of the Act. The record contains, in relevant part, the applicant's father's birth and baptismal certificates, his social security earnings record, and the applicant's aunt's declaration. The record establishes that the applicant's father was present in the United States in 1947, 1949, and 1965-1972. In addition, the applicant's father's sister was born in the United States in 1948, and she states in her declaration that the applicant's father was injured in 1970 and unable to work. She affirms that the applicant's father resided with her in California from 1970 through 1971. The applicant has established by a preponderance of the evidence that his father was physically present in the United States for 10 years prior to 1972, five of which were

after 1961. Thus, the applicant acquired U.S. citizenship at birth through his father pursuant to former section 301(a)(7) of the Act.

“There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The applicant has met his burden of proof, and his appeal will be sustained.

ORDER: The appeal is sustained. The case is returned to the Los Angeles Field Office for issuance of a certificate of citizenship.