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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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FILE: Office: WEST PALM BEACH, FL Date: **AUG 11 2010**

IN RE: 

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:

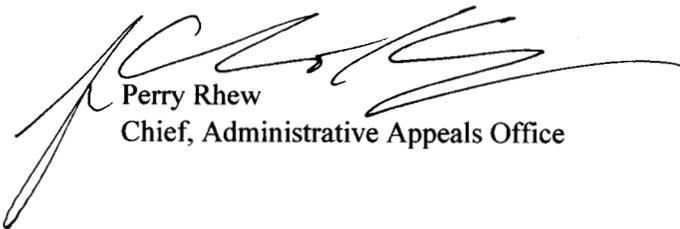


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, West Palm Beach, Florida, 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 24, 1958 in Mexico. The applicant's father, [REDACTED] was born on September 8, 1930 in Texas. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The district 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 former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 (1958). The application was accordingly denied.

On appeal, the applicant, through counsel, states that the applicant's father was physically present in the United States as required. Counsel notes the social security earnings statement in the record, indicating, in relevant part, the applicant's father's employment income in 1946-1947, 1952, 1954 and 1956-1958. Counsel also notes that the applicant's younger sibling obtained a certificate of citizenship.

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 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.

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.

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 former section 309 of the Act, 8 U.S.C. § 1409 (1958), also apply to his case.²

Under former section 309 of the Act, the applicant must establish that he was legitimated prior to the age of 21. 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. 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 the applicant's birth on January 24, 1958, five of which were after the age of 14 (after 1944), 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 some identification cards. The record establishes that the applicant's father was present in the United States in 1930, 1946, 1947, 1952, 1954, and 1956-1958. Even if the applicant's father was in the United States every day of each of those years, however, he can only establish physical presence for seven years prior to the applicant's birth.³ Thus, he could not transmit U.S. citizenship to the applicant at birth under 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

² Prior to November 14, 1986, 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 Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609. The applicant was born in 1958. He was over the age of 18 on November 14, 1986. Therefore, former section 309 is applicable to this case.

³ The applicant's sibling was born in 1961. The record suggests that the applicant's father was present in the United States for 10 years prior to 1961, but not prior to the applicant's birth in 1958.

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 not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.