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

[redacted]

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FILE: [redacted] Office: HARLINGEN, TX Date: AUG 11 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on November 22, 2006 in Mexico. The applicant's parents, as indicated on her birth certificate, are [redacted] and [redacted] The applicant's parents were married in Texas in 2007. The applicant's father was born in the United States on June 29, 1974. The applicant's mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

The field office director determined that the applicant could not derive U.S. citizenship through her father under section 322 of the Act, 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director's determination was based on his finding that the applicant was residing in Mexico, but her father in the United States. Therefore, the director concluded that the applicant was not residing in her father's legal and physical custody. The application was accordingly denied.

On appeal, the applicant's father states that he resides in Mexico with the applicant. See Statement of the Applicant's Father on Form I-290B, Notice of Appeal to the AAO. He maintains that the applicant is in his physical custody as required by section 322 of the Act. The AAO agrees with the field office director's determination that the applicant has not established her eligibility for U.S. citizenship under section 322 of the Act. The record is, at best, unclear with respect to her physical custody, given the applicant's father's testimony that the applicant is in her grandmother's custody as well as his employment, tax and property records, which indicate that he resides and works in the United States.

The matter will be remanded to the director for consideration of the applicant's eligibility for U.S. citizenship under sections 301(g) and 309(a) of the Act, 8 U.S.C. §§ 1401(g) and 1409(a).

Section 301(g) of the Act provides, in relevant 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 five years, at least two of which were after attaining the age of fourteen years . . . .

Because the applicant was born out of wedlock to a U.S. citizen parent, section 309 of the Act, as amended by the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), also applies to her case.

Section 309 of the Act provides, in pertinent part, that:

> (a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-
>
> > (1) a blood relationship between the person and the father is established by clear and convincing evidence.
> > 2) the father had the nationality of the United States at the time of the person's birth.
> > (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years and
> > (4) while the person is under the age of 18 years-
> >
> > > (A) the person is legitimated under the law of the person's residence or domicile,
> > > (B) the father acknowledges paternity of the person in writing under oath, or
> > > (C) the paternity of the person is established by adjudication of a competent court.

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes she was born in Mexico in 2006 to [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. In addition, the applicant's parents were married in 2007. The applicant has therefore established that she was legitimated.

The question remains, however, whether the applicant's father has agreed in writing to provide financial support for the applicant until she reaches the age of 18. Upon remand, the director shall request that the applicant submit evidence of her father's written agreement to financially support her until her eighteenth birthday. Additionally, the director shall request further evidence of the applicant's father physical presence in the United States to transmit U.S. citizenship under section 301(g) of the Act. Specifically, the applicant's father must reconcile his initial statement that he has been working and residing in the United States with his statement on the Form I-290B, Notice of Appeal to the AAO, indicating that his residence is in Mexico. The record in this case includes employment, tax and property records that suggest that the applicant's father has been physically present in the United States. The director shall evaluate this evidence in light of the applicant's

father's statements and, if necessary, request further evidence of the applicant's father's physical presence. The AAO notes that the requirement in section 301(g) of the Act, supra, is physical presence and not residence. The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for further review.

ORDER: The matter is remanded to the director for action consistent with this decision and issuance of a new decision which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.