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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: PHOENIX, AZ

Date:

AUG 26 2010

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Sections 301 and 309 of the
Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409 (1963)

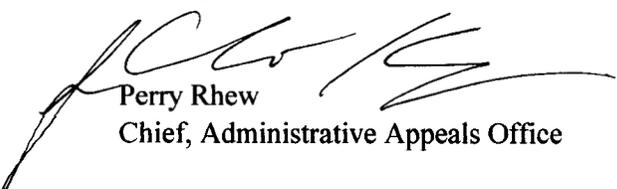
ON BEHALF OF APPLICANT:

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 Field Office Director, Phoenix, Arizona, 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, 1963 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]

[REDACTED] The applicant's parents were married in Mexico in 1968. The applicant's father was born in Mexico on June 30, 1937, but acquired U.S. citizenship at birth through his U.S. citizen parent. 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 failed to establish that his father had the period of physical presence in the United States required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1407(a)(7) (1963). 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. The appeal is accompanied by a brief and three additional notarized statements purporting to indicate that the applicant's father was physically present in the United States in the 1950s.

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). The applicant in the present matter was born in 1963. Former section 301(a)(7) of the Act 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 section 309 of the Act also apply to his case. 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). Former section 309(a) also applies 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 1963, and legitimated by his father by acknowledgment on his birth record in 1969.² He was under the age of 18 when section 309 was amended, but had already been legitimated. Former section 309(a) of the Act is therefore applicable to his case. The applicant was legitimated prior to the age of 21 and thus fulfills the requirement of former section 309 of the Act.

The question remains whether the applicant has established that his father was physically present in the United States for 10 years prior to 1963, five of which were after the age of 14 (after 1951), as required under former section 301(a)(7) of the Act. The record does not contain sufficient evidence of the applicant's father's U.S. physical presence prior to the applicant's birth. The record contains several notarized statements indicating that the applicant's father was a farm-worker in Texas. The statements, however, do not provide sufficient detail or probative value with respect to the applicant's physical presence prior to 1955. The additional statements submitted on appeal of Mr. [REDACTED] and Mr. [REDACTED] state that they met the applicant's father in 1950 or 1951, and that he resided on [REDACTED] in Fabens, Texas but worked on two different farms. The statements do not provide specific dates of employment. The applicant's father's social security earnings statement in the record further evidences just one year of employment prior to the applicant's birth. The preponderance of the evidence does not establish that the applicant's father had the ten years of physical presence in the United States prior to 1963 required to transmit U.S. citizenship to the applicant as claimed.

² According to the Library of Congress, parentage in the State of Chihuahua is established by, *inter alia*, voluntary acknowledgment of the child on the birth record. *See* LOC 2004-416.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.