U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

JUL 30 2010

FILE: [redacted] Office: DALLAS, TEXAS Date:

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1968)

ON BEHALF OF PETITIONER:

[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.

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, Irving, 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 in Mexico on April 2, 1968, to unwed parents [redacted] The applicant's father was a U.S. citizen based on his birth in the United States on March 29, 1920. The applicant's mother was born in Mexico, and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1968), based on the claim that she acquired U.S. citizenship at birth through her father.

The director determined that the applicant: (1) was not legitimated by her father, as required by section 309 of the Act, 8 U.S.C. § 1409; and (2) failed to show that her father met the physical presence requirements set forth in former section 301(a)(7) of the Act. *See Decision of the Director*, dated Sep. 30, 2009. The application was denied accordingly.[1] *Id.* On appeal, the applicant contends through counsel that she was legitimated by her father, and that her father was physically present in the United States for the requisite period. *See Form I-290B, Notice of Appeal*, filed Nov. 2, 2009; *Brief on Appeal.*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. INS,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1968. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.[2]

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

Additionally, because the applicant was born out of wedlock, she must satisfy the provisions set forth in former section 309(a) of the Act, 8 U.S.C. § 1409(a).[3] Former section 309(a) of the Act

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[1] Because the instant application is the applicant's second Form N-600, the director should have rejected the application and instructed the applicant to submit a motion to reopen or reconsider pursuant to 8 C.F.R. § 341.6. For purposes of administrative efficiency, however, the AAO will adjudicate this pending appeal.

[2] Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

[3] Former section 309(a) of the Act applies to persons, such as the applicant, who had attained 18 years of age on November 14, 1986, the date of enactment of the Immigration and Nationality Act

provided that children born out of wedlock to U.S. citizen fathers must show that paternity was established by legitimation before the child turned 21. *See* former section 309(a) of the Act.

Therefore, the applicant must establish that her paternity was established by legitimation before her twenty-first birthday on April 2, 1989. Additionally, the applicant must establish that her father was physically present in the United States for no less than ten years before her birth on April 2, 1968, and that at least five of these years were after her father's fourteenth birthday on March 29, 1934.

Here, the applicant has not established that her paternity was established by legitimation before she turned 21. Specifically, at the time of the applicant's birth, children born out of wedlock in San Luis Potosi, Mexico, could only be legitimated by the subsequent marriage of the parents. *See Matter of Reyes*, 16 I&N Dec. 436 (BIA 1978). Although the applicant contends that the state of San Luis Potosi amended its family code in 2008, eliminating the distinction between legitimate and illegitimate children, *see Brief on Appeal* at 5, this legislation does not benefit the applicant in these proceedings because the change occurred after her twenty-first birthday. As the Board of Immigration Appeals (BIA) has held: "When a country where a beneficiary was born and resides eliminates all legal distinctions between children born in wedlock and children born out of wedlock, all natural children are deemed to be the legitimate or legitimated offspring of their natural father from the time that country's laws are changed." *Matter of Moraga*, 23 I&N Dec 195, 199 (BIA 2001) (en banc). Additionally, the applicant has not presented any evidence that her parents perfected a common-law marriage under Texas law. *Cf. Matter of A-E-*, 4 I&N Dec. 405, 407-08 (BIA 1951).

Because the applicant has not demonstrated that her paternity was established by legitimation before April 2, 1989, no purpose would be served in evaluating whether the applicant's father met the physical presence requirements set forth in former section 301(a)(7) of the Act. *See* former section 309(a) of the Act (stating that former section 301(a)(7) of the Act only applied to children born out of wedlock if they met the legitimation requirements).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that she meets the requirements set forth in former section 309(a) of the Act. Accordingly, the applicant is not eligible for citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).