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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:

Date:

JUL 30 2010

IN RE:

APPLICATION:

Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1974)

ON BEHALF OF PETITIONER:

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

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 September 26, 1974, to unwed parents [REDACTED] and [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) (1974), based on the claim that he acquired U.S. citizenship at birth through his father.

The director determined that the applicant: (1) was not legitimated by his father, as required by section 309 of the Act, 8 U.S.C. § 1409; and (2) failed to show that his 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. *Id.* On appeal, the applicant contends through counsel that he satisfies the legitimation requirements set forth in the Act, and that his 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 1974. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.¹

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, he must satisfy the provisions set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a),² which provides, in pertinent part:

¹ 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.

² Contrary to the director's decision, former section 309(a) of the Act is inapplicable to this case because the old version applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical

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.

Therefore, the applicant must establish that the paternity and legitimation requirements in section 309(a) of the Act were satisfied before his eighteenth birthday on September 26, 1992. Additionally, the applicant must establish that his father was physically present in the United States for no less than ten years before his birth on September 26, 1974, and that at least five of these years were after his father's fourteenth birthday on March 29, 1934.

Here, the applicant did not meet all of the requirements set forth in section 309(a) of the Act before he turned 18. First, the applicant has not shown that his father agreed in writing to provide financial support for him while he was under the age of 18 years, as required by section 309(a)(3) of the Act. The applicant contends that the Report of Confidential Social Security Benefit Information, which indicates that the applicant received student benefits from his father's social security account from November, 1982 until August, 1992, satisfies the written financial agreement requirement. *See Brief on Appeal* at 5. The applicant further contends that "[t]o create this benefit for [the applicant, his father] must have had to sign and agree on a social security application form to provide benefits to [the applicant, and by] doing this, in effect he agreed in writing to support [the applicant] until the age of 18." *Id.* However, the record does not contain a copy of a social security application form

Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). Because the applicant was twelve years old on the date of enactment, and was not legitimated, the current, amended version of section 309(a) of the Act applies.

signed by the applicant's father, or any other evidence to support counsel's claim that the applicant's student benefits statement is equivalent to a written agreement from his father to provide financial support to the applicant until he reached the age of 18. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the applicant's burden of proof. *Matter of Obaigbena*, 19 [REDACTED] *Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Consequently, the applicant has not met his burden of satisfying section 309(a)(3) of the Act.

Second, the applicant has not established that he satisfied the requirements set forth in section 309(a)(4) of the Act before his eighteenth birthday. The applicant claims that his father acknowledged his paternity by registering his name on the applicant's birth certificate, and by making the applicant a beneficiary of his social security benefits. *See Brief on Appeal* at 5. However, because the record does not contain evidence that the applicant's father acknowledged paternity in writing under oath, the applicant has not satisfied the requirements in section 309(a)(4)(B) of the Act.

Additionally, the applicant has not shown that he was legitimated under section 309(a)(4)(A) of the Act. At the time of the applicant's birth, children born out of wedlock in [REDACTED] could only be legitimated by the subsequent marriage of the parents. *See Matter of Reyes*, 16 I&N Dec. 436 (BIA 1978). Further, the applicant has not presented any evidence that his parents perfected a common-law marriage under the laws of Texas. *Cf. Matter of A-E-*, 4 I&N Dec. 405, 407-08 (BIA 1951). Finally, there is no evidence that the applicant's paternity was established by adjudication of a competent court, as provided for in section 309(a)(4)(C) of the Act.

Because the applicant has not met the requirements set forth in section 309(a) of the Act, he is ineligible for citizenship under former section 301(a)(7) of the Act. *See* section 309(a) of the Act (providing that the applicable provisions of section 301 of the Act do not apply to children born out of wedlock unless they meet the requirements of section 309(a) of the Act). Accordingly, 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.

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 he meets the requirements set forth in 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.