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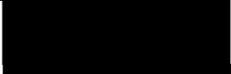
U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN ANTONIO, TX Date:

MAR 02 2010

IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 29, 1985 in Mexico. His birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's parents were not married to each other at the time of the applicant's birth, but married, in Texas, in 1998. The applicant's father has been a U.S. citizen since his naturalization in 1959. The applicant seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Naturalization Act (the Act), 8 U.S.C. §§ 1401 and 1409, claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim finding that he had failed to establish that his father agreed in writing to provide financial support until his 18th birthday, as required by section 309(a) of the Act, 8 U.S.C. § 1409(a).

On appeal, the applicant, through counsel, maintains that his father agreed to provide, and in fact provided, financial support until his 18th birthday. *See* Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by affidavits executed by the applicant's parents and three letters written by the applicant's father to his mother.

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, 1029 (9th Cir. 2000) (citations omitted). The applicant in the present matter was born in 1985. Section 301(g) of the former Act, 8 U.S.C. § 1401(g) (1985), therefore applies to the present case.¹

Section 301(g) of the former Act states, 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.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Prior to November 14, 1986, section 309 of the former Immigration and Nationality Act (former 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 1986 amendments added the requirement of a father's written agreement to provide financial support until the child turned 18 years old. 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 has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes he was born in Mexico in 1985 to [REDACTED] and [REDACTED]

[REDACTED] According to a 2004 Library of Congress (LOC) opinion, parentage in the State of Tamaulipas, Mexico can be established by, *inter alia*, acknowledgement of a child on the birth record. *See* LOC Opinion 2004-416. The AAO must conclude that the applicant was legitimated in 1985, when his birth was registered listing both his parents. Section 309(a) of the former Act is therefore applicable to the applicant's case. The applicant was legitimated at birth, therefore he fulfilled the requirements of section 309(a) of the former Act. The question of whether the applicant's father agreed in writing to provide financial support is therefore not at issue in these proceedings.

The AAO affirms the field office director's finding that the applicant established that his father was physically present in the United States for 10 years prior to 1985, five of which while over the age of 14 (after 1958). There are also DNA test results in the record evidencing the applicant's and his father's biological relationship.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.