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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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E₂

[REDACTED]

FILE: [REDACTED] Office: EL PASO, TX Date: MAR 06 2010

IN RE: [REDACTED]

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

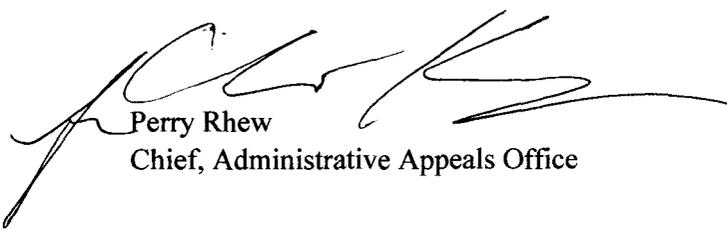
ON BEHALF OF APPLICANT:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, 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 on October 11, 1980 in Chihuahua, Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were not married to each other. The applicant's father was born in El Paso, Texas, in 1922, and passed away in 2004. 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 a blood relationship between him and [REDACTED]. The director further found that the applicant failed to establish that his father agreed in writing prior to the applicant's 18th birthday to provide for his financial support.

On appeal, the applicant, through counsel, maintains that there is sufficient evidence in the record to establish the parent/child relationship. *See* Applicant's Appeal Brief. The applicant states that his father "has been an active part of his life and was present at [his] interview." *Id.* at 1. Counsel states that the applicant is required to establish that he had a "bona-fide parent-child relationship" as defined in section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D). *Id.* at 2.

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 1980. Section 301(g) of the former Act, 8 U.S.C. § 1401(g) (1980), 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

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.

such citizen parent may be included in computing the physical presence requirements of this paragraph.

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 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.

According to a March 2004 advisory opinion from the Library of Congress (LOC 2004-416), parentage is governed in the Mexican state of Chihuahua by the Civil Code ("Code") promulgated on July 31, 1942 as amended on June 6, 1989. The Code, which applies retroactively, provides children with equal rights regardless of whether they were born within a union not bound by marriage or within a marriage. Children born within a union not bound by marriage need to have their parentage established in order to have their rights implemented. Parentage is established with respect to the mother by the mere fact of birth. Parentage is established with respect to the father by voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child. Acknowledgment may be achieved on the birth record, by a special acknowledgment proceeding before the Civil Registry Officer, by a public notarial instrument, under a will, or by direct and open admission in open court.

The AAO finds that the 1998 birth registration in the record, listing the applicant's father's name, serves as an acknowledgment under the Code. The applicant therefore was legitimated in 1998, when he was 17 years old. The amended provisions of section 309(a) of the Act therefore apply to his case.

Section 309(a) of the amended Act, 8 U.S.C. § 1409 (1986), states:

(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 is thus required, among other things, to establish *by clear and convincing evidence*, a blood relationship with [REDACTED]. Contrary to counsel's statement in the applicant's Appeal Brief, the applicant must establish more than that a bona-fide parent-child relationship, as defined in section 101(b) of the Act, 8 U.S.C. § 1101(b).²

The record in this case does not establish, by clear and convincing evidence, that the applicant and his father had a blood relationship. Further, the AAO notes that there is no evidence that the applicant's father agreed in writing, prior to the applicant's 18th birthday, to provide for his financial support. The evidence in the record relates to whether the applicant's father in fact provided financial support, but do not establish that he agreed in writing to do so prior to the applicant's 18th birthday as is required by the plain language of section 309(a)(3) of the Act. The letter from the applicant's father agreeing to provide financial support is dated in 2004, after the applicant's 18th birthday.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when

² The AAO notes in this regard that the applicable definition of child for citizenship purposes is found in section 101(c) of the Act, 8 U.S.C. § 1101(c), and not in section 101(b) of the Act. 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

doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.