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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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E₂

[REDACTED]

FILE: [REDACTED] Office: EL PASO, TEXAS

Date: OCT 05 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1958)

ON BEHALF OF PETITIONER:

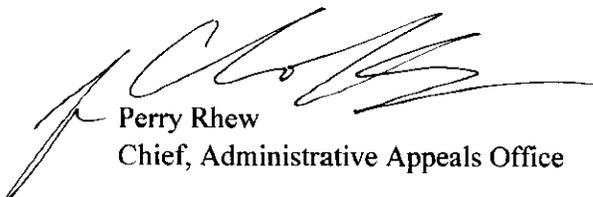
[REDACTED]

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, 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 in Mexico on March 7, 1958, to unwed parents [REDACTED] and [REDACTED]. The applicant's father is a U.S. citizen based on his birth in the United States on January 2, 1926, and the record reflects that the applicant's father was honorably discharged from the U.S. military in 1946. The applicant's mother was born in Mexico, and was not a U.S. citizen at the time of the applicant's birth. The applicant was admitted to the United States as a lawful permanent resident on December 27, 1971. 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) (1958), based on the claim that he acquired U.S. citizenship at birth through his father.

The applicant filed his first Application for Certificate of Citizenship (Form N-600) in 2003. *See Form N-600*, filed May 28, 2003. The director determined that the applicant failed to demonstrate that his paternity was established by legitimation as required by former section 309(a) of the Act, 8 U.S.C. § 1409(a), and denied the application accordingly. *See Decision of the District Director*, dated Jan. 3, 2006. The AAO dismissed a subsequent appeal finding that the applicant did not establish that he was legitimated by his father while he was under the age of 21. *See Decision of the AAO*, dated Nov. 27, 2007. The applicant filed a second Form N-600 in 2009. *See Form N-600*, filed Mar. 9, 2009. The director denied the second application finding that the applicant failed to show that he met the legitimation requirements under former section 309(a) of the Act.¹ *See Decision of the Field Office Director*, dated July 13, 2009. On appeal, the applicant contends through counsel that his paternity was established by legitimation under the laws of Mexico and Texas. *See Form I-290B, Notice of Appeal*, filed Aug. 12, 2009.

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 1958. Accordingly, former section 301(a)(7) of the Act controls his 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

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.

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: *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.

Additionally, because the applicant was born out of wedlock, he 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 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 his paternity was established by legitimation before his twenty-first birthday on March 7, 1979. 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 March 7, 1958, and that at least five of these years were after his father's fourteenth birthday on January 2, 1940.

The applicant contends that his paternity was established by legitimation under Mexican law because his birth state of Tamaulipas amended its civil code on February 1, 1987, eliminating the distinction between legitimate and illegitimate children. *See Notice of Appeal*. This contention lacks merit. Because the applicant was 29 years old when the change in the law occurred, the amended code of the state of Tamaulipas does not benefit the applicant in these proceedings. As the Board of Immigration Appeals (BIA) has held: "When a country where a [person] was born . . . 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). The BIA has explained that even though a country may change its laws to confer legitimacy from birth on all children then living, for U.S. immigration purposes, the change must take place prior to the child reaching the age required for legitimation to occur under the applicable provision of the Act. *Id.* (citing *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983)). In this case, the Tamaulipas code was changed when the applicant was 29. Accordingly, the applicant's paternity was not established by legitimation under Mexican law before he turned 21.

The applicant also contends, without citation, that he has been legitimated under Texas law because "there is a presumption that if [the applicant] lived with his father till [sic] the age of 18 and was listed on his birth certificate he was legitimated under the fact and law of this case." *Notice of Appeal*. Here, the applicant has not provided a court decree or any other evidence that his father took any action to legitimate him pursuant to the Texas Family Code prior to his twenty-first

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 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).

birthday. *See* Section 13.21 of the Texas Family Code (1975) (providing requirements for statement of paternity); *see also* *Matter of A-E-*, 4 I&N Dec. 405, 407-08 (BIA 1951) (holding that common-law marriage with recognition of paternity establishes legitimation under Texas law). Accordingly, the applicant has not established that his paternity was established by legitimation under Texas law before he turned 21.

Because the applicant has not demonstrated that his paternity was established by legitimation before March 7, 1979, 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 he 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.