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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



E₂

Date: **DEC 09 2011** Office: SAN ANTONIO, TX

FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940; 8 U.S.C. § 601 (1949)

ON BEHALF OF APPLICANT:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas (the director), and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed in 1993. The director granted the applicant's subsequent motion to reopen or reconsider and reaffirmed his prior decision to deny.¹ On appeal, the AAO remanded the case to the director for entry of a new decision considering the applicant's eligibility under the applicable statutes. The director certified his new decision to the AAO for review. The director's decision will be affirmed.

The record reflects that the applicant was born on August 25, 1949 in Mexico. The applicant's parents were [REDACTED]. The applicant's father was born in Texas on July 15, 1895. The applicant's parents were married in Texas in 1958. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

During an interview conducted on May 6, 2011, the applicant's mother admitted in a sworn statement that [REDACTED] was not the applicant's biological father. Although [REDACTED] registered the applicant as his child, the applicant's mother stated that he never legally adopted the applicant. In addition, counsel has submitted a letter dated October 6, 2011 in which he states that the applicant now "recognizes that he is not entitled to citizenship because of the recent revelations of his mother."

The AAO notes that "[t]he 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, 1028 n.3 (9th Cir. 2001) (citations omitted). The applicant was born in 1949. Section 201 of the Nationality Act of 1940, Pub. Law No. 76-853, is therefore applicable to this case.

Section 201(g) of the Nationality Act stated, in pertinent part:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien . . .

Because the applicant was born out of wedlock, section 309(b) of the Immigration and Nationality Act of 1952 (the Act), 8 U.S.C. § 1409(b), applies to his case. Section 309(b) of the Act provides, in relevant part, that

¹ The applicant filed a second Form N-600, Application for Certificate of Citizenship, which was rejected and treated as a motion pursuant to the regulation at 8 C.F.R. § 341.6.

(b) ... the provisions of section 301(a)(7) shall apply to a child born out-of-wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1952), provided, in turn,

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 . . .

Section 201(g) of the Nationality Act of 1940 and former section 301(a)(7) of the Act required a biological parent-child relationship in order for a child to acquire citizenship at birth through the U.S. citizen parent. Here, the record shows that ██████████ was not the applicant's biological father. Accordingly, he did not acquire citizenship through his stepfather under these statutory provisions. The decision of the director denying the application will be affirmed.

ORDER: The October 4, 2011 decision of the San Antonio, Texas Field Office is affirmed. The application remains denied.