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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

[REDACTED]

FILE:

[REDACTED]

Office: HARLINGEN, TX

Date:

FEB 24 2011

IN RE:

Applicant:

[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:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".
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 January 22, 1978 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father was born in Texas on March 23, 1927. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he had failed to fulfill the requirements of section 309(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a)(3), as amended. The application was accordingly denied.

On appeal, the applicant, through counsel, states that the applicant is not required to fulfill the requirements of section 309, as amended. *See* Appeal Brief. Counsel maintains that the requirement in section 309(a)(3) of the Act, as amended, did not become effective until November 14, 1986. *Id.* Counsel concludes that the applicant was legitimated prior to his twenty-first birthday, and therefore is eligible to acquire U.S. citizenship at birth through his father. *Id.*

The AAO reviews these proceedings *de novo*. *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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1978. Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his case. Section 309 of the Act provides for the application of section 301 of the Act to an out of wedlock child who fulfills the listed requirements. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1978),¹ stated, 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 Former section 301(a)(7) of the 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.

Prior to November 14, 1986, former section 309 of the Act required that a father's paternity be established by legitimation while the child was under 21 years of age. 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 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 record establishes that the applicant was born in 1978, and legitimated by his father in 1984 (when his birth was registered by both parents).² He was eight years old when section 309 of the Act was amended in 1986, but he had already been legitimated in 1984. Therefore, former section 309(a) of the Act, as in effect prior to the 1986 amendments, is applicable to his case.

The applicant has established that he was legitimated prior to his twenty-first birthday as was required by former section 309(a) of the Act. The question remains whether he can establish that his father was physically present in the United States for 10 years prior to 1978, five of which were after the age of 14 (after 1941) as required under former section 301(a)(7) of the Act. The record contains sufficient evidence of the applicant's father's presence in the United States prior to the applicant's birth, including his father's birth and baptismal certificates, selective service registration documents, and his social security earnings statement indicating more than 10 years of employment income prior to 1978.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has met his burden of proof. The appeal will therefore be sustained. The matter will be returned to the Dallas Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Dallas Field Office for issuance of a certificate of citizenship.

² According to a 2004 Library of Congress (LOC) opinion, parentage in the State of Tamaulipas, Mexico can be established, *inter alia*, by acknowledgement of a child on the birth record. *See* LOC Opinion 2004-416.