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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

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FILE:



Office: SAN ANTONIO, TX

Date:

JAN 21 2011

IN RE:

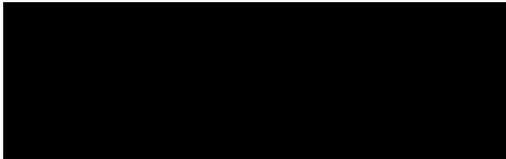
Applicant:



APPLICATION:

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

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, 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 July 18, 1962 in Coahuila, Mexico. The applicant's parents were never married to each other. The applicant's father was a native-born U.S. citizen, born in Texas on May 26, 1936. He passed away in 2008. 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 citizenship claim upon finding that the applicant's paternity was not established by legitimation before his twenty-first birthday as was required by former section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a), as in effect prior to the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA).

On appeal, the applicant, through counsel, maintains that he was legitimated in accordance with the Civil Code of the State of Coahuila, Mexico. See Appeal Brief at 3-5. The appeal is accompanied by an Affidavit executed by [REDACTED], offering his expert legal opinion on the legitimation laws of the State of Coahuila.

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 1962. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1962), therefore applies to the present case.¹

Former section 301(a)(7) of the Act 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

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.

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.

Because the applicant was born out of wedlock, the provisions set forth in former section 309 of the Act apply to his case.² Former section 309 of the Act required that a father's paternity be established by legitimation while the child was under the age of 21.

At issue in this case is whether the applicant was legitimated prior to his twenty-first birthday. In *Matter of Cabrera*, 21 I&N Dec. 589 (BIA 1996), the Board of Immigration Appeals defined "legitimation" as "the act of putting a child born out of wedlock in the same legal position as a child born in wedlock." The Library of Congress issued an opinion in 2004 explaining that the Civil Code in effect in the State of Coahuila since 1999 eliminated the distinctions between in and out of wedlock children and that it applied retroactively to children born before 1999, so long as it was not applied to the detriment of any person. The Library of Congress has since issued two more opinions on July 19, 2010 and September 20, 2010 respectively, addressing the question of legitimation in the State of Coahuila under the law in effect prior to 1999. The Library of Congress opinions state that parentage of children born out of wedlock may be established, with respect to the father, by voluntary acknowledgement or by a ruling declaring paternity. The acknowledgment may be done before the Civil Registry Officer on the birth record. The applicant's father's name is listed on his birth record. The AAO notes further that the father appears as the informant on the applicant's birth record. The AAO finds, therefore, that he was acknowledged at birth and properly "legitimated" under the Civil Code of the State of Coahuila.³ The

² The amendments made to the Act in 1986, which included a new section 309(a), is applicable to persons who had not attained 18 years of age, or who had not been legitimated, as of the November 14, 1986 date of the enactment of the INAA. 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 was over the age of 18 when section 309 of the Act was amended. Therefore, former section 309(a) of the Act is applicable to his case.

³ The September 2010 Library of Congress opinion concludes that "[i]t is unclear whether the repeal of [the Civil Code of the State of Coahuila] had the specific purpose or legal effect of placing children born out of wedlock in the same legal status as children born in wedlock." The AAO finds it unnecessary to determine the purpose of the 1977 repeal of the previous Civil Code because the Library of Congress had previously opined that the Code, as amended in 1999, applied retroactively as long as it was not detrimental to the person.

applicant has therefore established that he was legitimated prior to his twenty-first birthday and that he acquired U.S. citizenship at birth pursuant to former section 309(a) of the Act.⁴

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 San Antonio Field Office for issuance of a certificate of citizenship.

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

⁴ As noted in the Field Office Director's decision, the evidence in the record establishes that the applicant's father had the physical presence in the United States as required by former section 301 of the Act.