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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]

Date: JUL 12 2011 Office: NEW ORLEANS, LA FILE: [redacted]

IN RE: Applicant: [redacted]

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 (1988).

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.

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 $630. 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, New Orleans, Louisiana, 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 18, 1988 in Venezuela. The applicant's parents are , a U.S. citizen, and . The applicant's parents were married to each other on September 30, 2002. 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 establish that his father had agreed in writing to provide for his financial support as is required by section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, as amended. The director further found that the applicant had failed to establish that his father had the physical presence required in the United States in order to transmit U.S. citizenship under section 301 of the Act, 8 U.S.C. § 1401.

On appeal, the applicant submits additional evidence in support of his claim. The evidence submitted includes, in part, his parents' affidavits as well as affidavits by his grandmother and uncles. Additionally, the applicant submits real estate lease agreements, school records and information about health care in Venezuela. The applicant claims that his father financially supported him before and after his marriage to the applicant's mother.

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 1988. Former section 301(g) of the Act is therefore applicable to his case.

Former section 301(g) of the Act provides, in relevant 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 five years, at least two of which were after attaining the age of fourteen years . . . .

The record reflects that the applicant was born out of wedlock. *See* Marriage Certificate of Applicant's Parents, dated September 30, 2002. Section 301(g) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the conditions specified in section 309(a) of the Act.

Section 309(a) of the Act states, in relevant part:

> (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 record establishes that the applicant was legitimated by his father as a result of his parents' marriage in 2002. *See* Applicant's Birth Certificate. The applicant's father was born in Louisiana on August 16, 1948. At issue in this case is whether the applicant's father agreed in writing to provide financial support for the applicant until his eighteenth birthday. The affidavits of the applicant's parents and other family members suggest that the applicants' father was involved in the applicant's life and may have indeed provided him financial support, but there is no contemporaneous document in the record whereby the applicant's father agreed to financially provide for the applicant until his eighteenth birthday as is required by section 309(a)(3) of the Act. The applicant cannot fulfill the requirements of section 309(a) of the Act, and therefore did not acquire U.S. citizenship at birth through his father.

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 not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.