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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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[REDACTED]

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Date: **JUL 12 2011** Office: CHICAGO, IL

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 (1967).

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, Chicago, Illinois, 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 December 22, 1967 in Mexico. The applicant's father, Rodolfo Eti, was born in El Paso, Texas on February 14, 1930. The applicant was born out of wedlock. The record does not contain any evidence of her mother's citizenship. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her father had the period of physical presence in the United States required in order to transmit U.S. citizenship under former section 301 of the Act, 8 U.S.C. § 1401.

On appeal, the applicant, through counsel, submits a brief in support of her appeal in which she argues that she was never informed of the requirement to establish that her father had been physically present in the United States for the statutorily required period and that she is *prima facie* eligible for U.S. citizenship. See Appeal Brief.

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 1967. Former section 301(a)(7) of the Act is therefore applicable to her case.¹

Former section 301(a)(7) of the Act provided, 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 ten years, at least five of which were after attaining the age of fourteen years

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act also apply to her case. 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. 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

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.

Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Former section 309(a) also applies 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 applicant was born in [REDACTED] and legitimated by her father by acknowledgment on her birth record in 1968.² She was over the age of 18 when section 309 was amended, but had already been legitimated. Former section 309(a) of the Act is therefore applicable to her case. The applicant was legitimated prior to the age of 21 and thus fulfills the requirement of former section 309 of the Act.

The question remains whether the applicant has established that her father was physically present in the United States for 10 years prior to 1967, five of which were after the age of 14 (after 1944), as required under former section 301(a)(7) of the Act.

The record contains, in relevant part, a copy of the applicant's birth certificate, a copy of the applicant's father's birth certificate, an affidavit executed by the applicant, and a social security earnings statement listing employment income for the years 1954 to 1958 and 1964 (and minimal income during the years 1959 and 1966). The record also contains letters from the National Personnel Records Center and U.S. Coast Guard indicating that there was no record of the applicant's father's claimed military service.

The record does not contain sufficient evidence of the applicant's father's U.S. physical presence prior to the applicant's birth in 1967. The record establishes that the applicant's father was physically present in the United States for, at most, five years prior to 1967. The record does not contain any contemporaneous documentation or affidavits executed by witnesses with personal knowledge of the applicant's father's physical presence. The record therefore does not establish, by a preponderance of the evidence, that the applicant's father had the ten years of physical presence in the United States prior to 1967 required to transmit U.S. citizenship to the applicant as claimed.

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 her burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

² According to the Library of Congress, parentage in the State of Chihuahua is established by, *inter alia*, voluntary acknowledgment of the child on the birth record. *See* LOC 2004-416.