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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

[redacted]

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Date: JUN 20 2011 Office: HARLINGEN, TX 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 (1978).

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, 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 31, 1978 in Mexico. The applicant's parents are . They were married in 1971 in Mexico. The applicant's father was born in Texas on May 4, 1944. 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 agreed in writing to provide for her 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 rejected the applicant's claim that she was born in wedlock.

On appeal, the applicant submits an appeal brief as well as a "Letter of Legal Opinion" stating, in part, that she was born in wedlock. The applicant maintains that her parents were married in 1971 and that, in accordance with Mexican law, their marriage was valid because it was never invalidated. The applicant further claims that her father entered into the marriage with the good faith belief that he was divorced from his previous wife in Texas. The applicant lastly claims that there was also a putative marriage between her parents in accordance with Texas law.

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. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401, is therefore applicable to her case.[1]

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

[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 record reflects that the applicant's parents were married in 1971, as evidenced by their Mexican marriage registration document. The applicant's father, however, had been previously married in Texas. The record indicates that he entered into his marriage with the applicant's mother believing, in good faith, that he had been divorced. The record contains a copy of the divorce petition filed by the applicant's father's first wife. The petition was dismissed and the divorce was not finalized until 1987. Subsequent to the divorce, the applicant's parents registered their marriage in Texas.

The field office director determined that the applicant was born out of wedlock upon finding that her parents' 1971 marriage was invalid. The director further determined that the applicant was legitimated in 1987, upon the registration of her parents' marriage in Texas. On appeal, the applicant maintains that the director erred in finding that she was born out of wedlock.

The AAO finds it unnecessary to determine whether the applicant was born in or out of wedlock, as she was legitimated prior to 1986 in accordance with the laws of the State of Tamaulipas, Mexico.[2] Former section 309(a) of the Act[3] required only that the applicant establish that she was legitimated prior to her twenty-first birthday. The applicant, as previously noted, was legitimated shortly after birth in the State of Tamaulipas, Mexico where she and her father were both residing at the time. Therefore, the applicant can fulfill the requirements of former section 309(a) of the Act.

Upon fulfilling the requirement in former section 309(a) of the Act, the applicant must establish that her father had the physical presence required by former section 301(a)(7) of the Act. The record indicates that the applicant's father was physically present in Texas from birth until 1971, when he was 27 years old. *See* Applicant's Father's School Records, Applicant's Parents' Affidavits, and Affidavits of [redacted] The record thus establishes, by a preponderance of the evidence, that the applicant's father was physically present in the United States for ten years prior to 1978, at least five of which were after 1958 (when he turned 14 years old) as is required by former section 301(a)(7) of the Act.

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[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. The record establishes that the applicant was born in 1978, and was legitimated by her father in 1979 when her birth was registered by her father.

[3] 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 Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments further provided, however, 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 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 her burden of proof. The appeal will therefore be sustained. The matter will be returned to the Harlingen Field Office for issuance of a certificate of citizenship.

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