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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**



E<sub>2</sub>

Date: **AUG 16 2012**

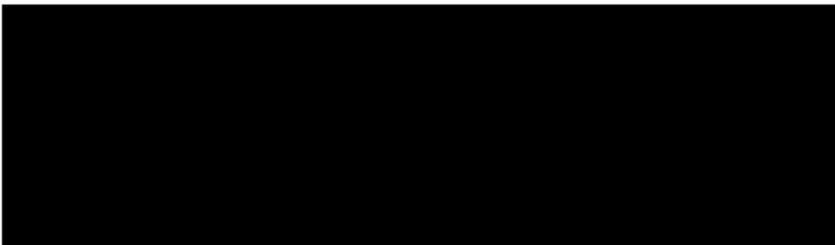
Office: HARLINGEN, TX

FILE: 

IN RE: Applicant: 

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:

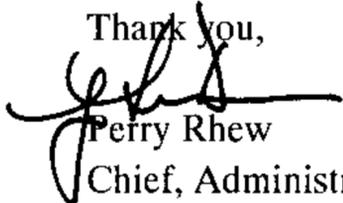


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Harlingen, Texas, 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 May 13, 1989 in Mexico. The applicant's parents are [REDACTED]. The applicant's father was born in Texas on January 26, 1950. The applicant's parents were married to each other in 1996. 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(a), as amended.

On appeal, the applicant, through counsel, maintains that the requirement of section 309(a)(3) of the Act is inapplicable in her case because she is over the age of 18. *See* Letter Brief in Support of Appeal. Thus, the applicant claims that she need not show that her father has agreed in writing to provide for her financial support. *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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1989. Section 301(g) of the Act, 8 U.S.C. § 1401, is therefore applicable to her case.

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 prior to her parents' wedding. She was therefore born out of wedlock. 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 contains the results of a DNA test establishing the blood relationship between the applicant and her father. The applicant's birth record and her parents' subsequent marriage establish that she was legitimated by her father. The applicant's father's Texas birth certificate establishes his U.S. citizenship. Lastly, the record contains the applicant's father's baptismal certificate, social security records, photos, and other documentation evidencing his physical presence in the United States. At issue in this case is whether the applicant's father has agreed in writing to provide financial support for the applicant until her eighteenth birthday.

The applicant maintains that the language of section 309(a)(3) of the Act, specifically the addition of the word "has," necessarily means that the applicant, who is already over the age of 18, need not submit her father's written agreement to provide for her financial support. Counsel does not offer any support for his interpretation of this subsection, nor does the AAO find it persuasive. Section 309(a)(3) of the Act states that the applicant must demonstrate that her father "has agreed in writing to provide financial support for [her] until [she] reaches the age of 18 years." The plain reading of section 309(a)(3) of the Act requires that the applicant submit evidence that her father has agreed in writing to financially provide for her prior to her eighteenth birthday; it does not exempt applicants over the age of 18 from this requirement. See 7 Foreign Affairs Manual (FAM) § 1133.4-2.

The record in this case does not contain any evidence of the applicant's father's written agreement to financially support her prior to her eighteenth birthday. The applicant therefore cannot fulfill the requirements of section 309(a)(3) of the Act, and did not acquire U.S. citizenship at birth through her 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 her burden of proof. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.