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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



Date: **FEB 13 2012** Office: KANSAS CITY, MO File:

IN RE:

APPLICATION: Application for Certificate of Citizenship under Former Sections 301(a)(7) and 309(a) of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(a)(7) and 1409(a) (1965)

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 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 Field Office Director, Kansas City, Missouri (the director), cancelled the applicant's Certificate of Citizenship and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the matter shall be returned to the director for further action.

The record reflects that the applicant was born in Chihuahua, Mexico on June 14, 1965, to Alicia Chavira. The applicant's mother is not a citizen of the United States. The applicant claims that [REDACTED], a U.S. citizen by birth in Walnut Springs, Texas on October 30, 1931, is her father. On February 13, 1996, the applicant was issued a Certificate of Citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1965), based on the claim that she acquired U.S. citizenship at birth through her father [REDACTED].

The director determined that, in seeking the Certificate of Citizenship, the applicant had submitted fraudulent documentation and that the documentation subsequently submitted to rebut the finding of fraud failed to establish that the applicant was the natural and legitimated child of [REDACTED]. After providing the applicant with proper notice, the field office director cancelled the Certificate of Citizenship pursuant to section 342 of the Act, 8 U.S.C. § 1453. *See Decision of the Director*, dated August 10, 2011. On appeal, counsel contends that the U. S. government should be collaterally estopped from canceling the applicant's Certificate of Citizenship; and the applicant is Samuel Guyton's legitimated daughter. *See Counsel's Brief*.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1965. Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.¹

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

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

Additionally, because the applicant was born out of wedlock, she must satisfy the provisions set forth in former section 309(a) of the Act.² Former section 309(a) of the Act provided, in pertinent part:

The provisions of paragraphs (3), (4), (5), and (7) of section 301(a) . . . of this title shall apply as of the date of birth to a child out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Therefore, the applicant must demonstrate that her paternity was established by legitimation before her twenty-first birthday on June 14, 1986.

Here, the applicant has not established that she has been legitimated under the laws of Chihuahua, Mexico. According to a March 2004 advisory opinion from the Library of Congress (LOC 2004-416), the Civil Code ("Code") of Chihuahua, promulgated on July 31, 1942 and as amended on June 6, 1989, provides that all children have equal rights regardless of whether they were born within a union not bound by marriage or within a marriage; however, children born within a union not bound by marriage need to have their parentage established in order to have their rights implemented. Parentage is established with respect to the father by voluntary acknowledgment which may be achieved by any of the following ways: 1) on the birth record, before the Civil registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in open court. The legitimation of a child may also be achieved through the subsequent marriage of the child's natural parents combined with acknowledgement of the child.

Counsel contends that the applicant was legitimated through her parents' subsequent marriage in 1969; however, the marriage certificate submitted by the applicant has proven to be fraudulent and altered. The applicant submitted a marriage certificate indicating that [REDACTED] were married in Ojinaga, Chihuahua, on May 26, 1965. Affidavits and testimony indicate that the applicant's mother and [REDACTED] were not married until 1969 and examination of the document indexes and the document on its face establish that the document has been altered and the applicant has failed to provide an unaltered marriage certificate to prove the marriage.

Even if the applicant were able to prove the marriage between [REDACTED] she has failed to establish that such a marriage would have legitimated her under the laws of Chihuahua. First, the applicant and her siblings refused to comply with a request for DNA evidence to establish that she was the natural child of [REDACTED] while counsel contends that the applicant's mother and [REDACTED] openly and notoriously recognized the applicant as their child, there is no evidence in the record to establish that [REDACTED] acknowledged the applicant as his child under the laws of Chihuahua, as previously stated. Counsel contends that such an acknowledgement was achieved through the filing of an extemporaneous birth certificate for the

² Former section 309(a) of the Act applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

applicant in 1972; however, the birth record cited by counsel does not meet the requirements for the legitimation of a child. First, such an extemporaneous birth certificate does not meet the requirements of the Code for acknowledgment of a child since the acknowledgement was not made on the original record or by a special proceeding which would then be noted on the original birth record. Second, the certificate does not contain the signature of [REDACTED] whose signature and presence at the acknowledgement of the child in question is required for such an acknowledgement to be recognized. Third, even the 1972 birth record is altered and contains fraud: the year of birth of the child is altered; and the two signatures for the witnesses are written by the same hand. As such, the applicant has failed to establish that her paternity was established by legitimation before her twenty-first birthday on June 14, 1986.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 301(a)(7) of the Act, and the appeal will be dismissed.

The record contains a copy of the applicant's U.S. passport and counsel contends that the United States should be collaterally estopped from canceling the applicant's Certificate of Citizenship. In *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984), the Board held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Id. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The U.S. Citizenship and Immigration Service's (USCIS) Adjudicator's Field Manual at § 71.1(e) instructs:

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be returned to the director to request that the Passport Office review and decide whether to revoke the applicant's passport.

ORDER: The appeal is dismissed. The matter is returned to the director for further action.