

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

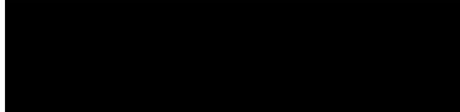
PUBLIC COPY

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



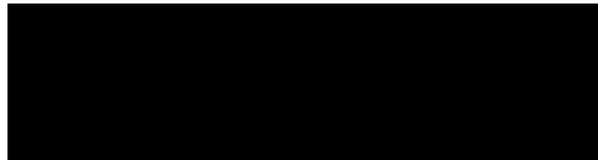
Date: **FEB 16 2012** Office: HARLINGEN, TX

FILE:

IN RE:

APPLICATION: Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g).

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, Harlingen, Texas, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born out-of-wedlock in Reynosa, Tamaulipas, Mexico on [REDACTED]. The applicant's father acquired U.S. citizen at birth through the applicant's grandfather. The applicant's mother is not a U.S. citizen. The applicant has never been admitted to the United States as a lawful permanent resident. The applicant's parents have never married. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The field office director determined that the applicant failed to establish eligibility for citizenship under section 309(a) of the Act because his father had not agreed in writing to provide financial support for him until he reached the age of 18 years. The field office director denied the application accordingly. *See Decision of the Field Office Director*, dated July 21, 2010. On appeal, counsel submits a 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 1990. Accordingly, current section 301(g) of the Act controls his claim to acquired citizenship.

Section 301(g) of the Act states, in pertinent 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 . . . 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 five years, at least two of which were after attaining the age of fourteen years. . .

Additionally, because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act also apply to this case. Section 309(a) of the Act, 8 U.S.C. § 1409(a), provides, in pertinent part:

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.

On appeal, counsel asserts that the applicant's father acknowledged and legitimated him under Mexican law because his father was identified on his birth certificate. Counsel further contends that subsection 309(a)(3)'s statement of support is not required in situations where an unmarried U.S. citizen father takes the child into his home and provides for the child's health, education and general welfare, as is the case with the applicant. Counsel contends that case law holds that when the U.S. citizen father provided financial support and raised his children, whether or not the relationship of the parents is ever formalized, the relationship complies with the intent of section 309(a)(3) of the Act and transmits citizenship to children born out-of-wedlock outside of the United States. Counsel cites *Nehme v. INS*, F. 3d 415 (5th Cir. 2001) and *Nguyen v. INS*, 533 U.S. 53 (2001) to support his contentions; however, (1) *Nehme* does not make any findings in regard to section 309(a)(3) of the Act because the case refers to derivation of citizenship for a child born in wedlock; and (2) while *Nguyen* refers to an earlier version of section 309(a)(3) of the Act, it is not on point as it only makes findings as to the constitutionality of the law and does not set forth that a U.S. citizen father need not provide the requisite statement of support.

The statute requires the applicant to establish that his father agreed in writing to provide financial support for him until he reached the age of 18 years. Because the evidence submitted by the applicant failed to meet this requirement, the director requested further evidence that his father agreed in writing to provide financial support for him until he reached the age of 18 years. The applicant failed to submit such evidence on two occasions and also on appeal. Because the applicant has not demonstrated that his father agreed in writing to provide financial support for him until he reached the age of 18 years, no purpose would be served in evaluating whether the applicant has met any of the other requirements under section 309(a) of the Act or whether the applicant's father meets the physical presence requirements set forth in section 301(g) of the Act.

In addition, the applicant is not eligible to derive U.S. citizenship under section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), because

the applicant is not residing in the legal and physical custody of his citizen parent pursuant to a lawful admission for permanent residence.¹

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). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in section 309(a) of the Act. Accordingly, the applicant is not eligible for citizenship under section 301(g) of the Act and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed. The application remains denied.

¹ The record reflects that the applicant entered the United States without inspection in April 2008 and is currently in immigration proceedings as an alien present without inspection or parole.