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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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Date: **MAR 13 2012**

Office: SAINT PAUL, MN

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7)(1972)

ON BEHALF OF APPLICANT:

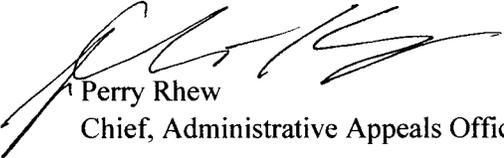
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INSTRUCTIONS:

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, Saint Paul, Minnesota, 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 Matamoros, Tamaulipas, Mexico on July 23, 1972. The applicant's father is a U.S. citizen.<sup>1</sup> The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on December 1, 1990.<sup>2</sup> The applicant's parents have never married.<sup>3</sup> The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1972).

The field office director determined that the applicant failed to establish eligibility for citizenship under section 309(a) of the Act because he failed to demonstrate that he was legitimated prior to reaching 18 years of age and that his father agreed in writing to provide financial support for him until he reached the age of 18 years. The field office director also determined that the applicant failed to demonstrate that his father met the physical presence requirements under the Act. The field office director denied the application accordingly. *See Decision of the Field Office Director on Motion*, dated June 27, 2011. On appeal, counsel submits the Form I-290B, Notice of Appeal, a brief, affidavits from the applicant's parents and family, copies of photographs and copies of documentation already in the record.

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. . .

Because the applicant was born out of wedlock, the derivative citizenship 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.

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<sup>1</sup> See Court Ordered Delayed Certificate of Birth, August 4, 2003, issued February 25, 2005.

<sup>2</sup> The applicant was subsequently placed into immigration proceedings and was granted cancellation of removal as a lawful permanent resident.

<sup>3</sup> The applicant's father was married to at the time of the applicant's birth and is still married to a woman other than the applicant's biological mother.

- (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.

Therefore, the applicant must establish by clear and convincing evidence a blood relationship between himself and his U.S. citizen father; the applicant's father was a U.S. citizen at the time of his birth; the applicant's father agreed in writing to provide financial support for the applicant until he reached the age of 18 years; and the applicant had been legitimated or the applicant's paternity had been established before he reached the age of 18 years.

On appeal, counsel contends that the applicant was legitimated prior to November 14, 1986 and is, therefore, only subject to former section 309(a) of the Act. Former section 309(a) of the Act, which required that paternity be established by legitimation before a child turned 21, is inapplicable to this case because it 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). As discussed below, while the record reflects that the applicant's paternity was established prior to November 14, 1986, he was not legitimated prior to November 14, 1986.

Counsel contends, without citation, that the applicant was legitimated under Texas law because "the father consents in writing to be named as the child's father on the child's birth certificate, or before the child reaches the age of majority (18), the father receives the child into his home and openly holds the child out as his." *See Counsel's Brief*. The applicant was not legitimated under Texas law prior to November 14, 1986. Here, the applicant has not provided a court decree or any other evidence that his father took any action to legitimate him pursuant to the Texas Family Code. *See* Section 13.01 and 13.21 of the Texas Family Code (1975) (providing requirements for statement of paternity). While *Matter of A-E-*, 4 I&N Dec. 405, 407-08 (BIA 1951) holds that a common-law marriage with recognition of paternity can also establish legitimation under Texas law, the applicant's parents could not perfect a common-law relationship because the applicant's father was already married to another individual and the applicant's parents did not reside together within the State of Texas until 1987. Accordingly, the applicant has not established that his paternity was established by legitimation under Texas law before November 14, 1986.

The applicant was also not legitimated under applicable Mexican law. According to a 1992 advisory opinion from the Library of Congress (no LOC No. available), the Civil Code of Tamaulipas (“Code”), which went into effect prospectively on October 24, 1961, provided that a child born out of wedlock could be legitimated only by the subsequent marriage of the child’s parents, provided that the child was also acknowledged by them. While parentage of a child born out of wedlock is established with regard to the father by his acknowledgement of the child, e.g., when registering its birth, a child born out of wedlock could only be legitimated by the subsequent marriage of the child’s parents. Tamaulipas did not amend its civil code to eliminate the distinction between legitimate and illegitimate children until February 1, 1987. Because the change in law occurred after November 14, 1986, the applicant’s paternity was not established by legitimation prior to November 14, 1986. *See Matter of Moraga*, 23 I&N Dec 195, 199 (BIA 2001) (en banc); and *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983). Accordingly, while the applicant’s paternity was established by legitimation under Mexican law before he turned 21, it was not established prior to November 14, 1986 and the applicant is subject to current section 309(a) of the Act as set forth above.

On appeal, counsel also contends that the statement of support is not required in the applicant’s case. Counsel states that the applicant’s father did not need to complete a letter and was not aware that a letter would be required indicating that he would support his son because he is registered on the applicant’s birth certificate and the applicant resided with him and the family unit. Counsel contends, without citation, that present case law essentially requires the applicant to prove that he lived with his biological father. Counsel also cites portions of the Act and the regulations that relate to the bona-fide relationship between a parent and a child, but do not relate to acquisition of citizenship. While the record indicates that a bona-fide parent-child relationship existed between the applicant and his father, section 309(a)(3) of the Act *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 standard, U.S. Citizenship and Immigration Services (USCIS) denied the application for failure to submit evidence that his father agreed in writing to provide financial support for him until he reached the age of 18 years. *See Director’s Decision*, dated December 10, 2008. The applicant failed to submit such evidence in his motion to reopen and also on appeal. *See Decision of the Field Office Director on Motion*, dated June 27, 2011.

The applicant was not legitimated prior to the effective date of current section 309(a) of the Act and he has not demonstrated that his father agreed in writing to provide financial support for him until he reached the age of 18 years as required by subsection 309(a)(3) of the Act. Accordingly, 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 for the applicant to have acquired citizenship at birth under former section 301(a)(7) of the Act.

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 former section 301(a)(7) of the Act and the appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.