

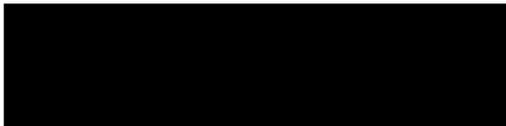


U.S. Citizenship
and Immigration
Services

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Date: **MAY 01 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 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 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 [REDACTED] 1991 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's father was born in Texas on [REDACTED] 1963. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his father had agreed in writing to provide for his 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, submits a copy of a court order enforcing his father's child support obligation and maintains that it is tantamount to his father's written agreement to provide financial support. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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 1991. Section 301(g) of the Act is therefore applicable to his 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 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, 8 U.S.C. § 1409(a).

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 a copy of a Texas court order establishing the applicant's father's paternity. The record also contains the results of a DNA test establishing the blood relationship between the applicant and his father. The applicant's father's Texas birth certificate is also included in the record. Lastly, the record contains school records evidencing the applicant's father's physical presence in the United States. At issue in this case is whether the applicant's father agreed in writing to provide financial support for the applicant until his eighteenth birthday.

The applicant maintains that the 2003 Texas court order enforcing his father's child support obligation is tantamount to a written agreement to financially support the applicant. The applicant notes that his father did not appeal the 2003 order and, in fact, supported him financially while he was under the age of 18. The record does not contain, however, a document whereby the applicant's father specifically agreed in writing to financially provide for the applicant prior to his eighteenth birthday as is required by section 309(a)(3) of the Act. *See* 7 FAM 1133.4-2.

The 2003 order indicates that the applicant's father was in arrears in terms of his child support obligations and that his wages would thereafter be garnished. The order does not establish that the applicant's father agreed to financially support him, nor does the fact that the applicant's father did not appeal the order amount to a written agreement to financially support the applicant as is required by section 309(a)(3) of the Act. Moreover, there is no legal support for the applicant's claim otherwise. The plain language of the statute requires that the child's father, unless deceased, agree in writing to provide financial support until the child's eighteenth birthday. The applicant's father in this case did not execute such a written agreement prior to the

applicant's 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 his 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 his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.