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

(b)(6)

Date: APR 0 8 2013 Office: HARLINGEN, TX FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1985)

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Harlingen, Texas Field Office Director (the director) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn in part and affirmed in part. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born out of wedlock in the State of Tamaulipas, Mexico on The applicant's father is a U.S. citizen based on his birth on October 24, 1947 in the State of Texas. The applicant's mother is not a U.S. citizen. The applicant's parents have never been married to each other. The applicant seeks 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), based on the claim that he acquired U.S. citizenship at birth through his father.

The applicant filed his Form N-600 on September 17, 2009. The director determined that the applicant was ineligible for a certificate of citizenship because he had not been legitimated by his father and his father had not agreed in writing to provide financial support for him before he reached the age of eighteen. The director denied the application accordingly. On appeal, counsel contends that the applicant was legitimated prior to his twenty-first birthday and submits, among other items, an affidavit from the applicant's father summarizing the financial and other support that he provided to the applicant and the applicant's siblings.

Applicable Law

The AAO conducts appellate review on a de novo basis. *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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1985. Accordingly, former section 301(a)(7) of the Act controls his 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

[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. Current section 301(g) of the Act is inapplicable here because it applies only to individuals born on or after 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). (1986 Act). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

> 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.

Additionally, because the applicant was born out of wedlock, he must satisfy the provisions set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), which provides, in pertinent part:[2]

> 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.

Therefore, the applicant must establish that his paternity was established by legitimation before his eighteenth birthday on February 19, 2003. Additionally, the applicant must establish that his father was physically present in the United States for no less than ten years before the applicant's birth on [redacted] and that at least five of these years were after his father's fourteenth birthday on [redacted]

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *De novo* review of the relevant evidence demonstrates that the petitioner was legitimated prior to his eighteenth birthday, and the director's contrary decision on that issue is

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[2] Current section 309(a) of the Act applies to persons, such as the applicant, who had not yet attained eighteen years of age on November 14, 1986, the date of enactment of the 1986 Act. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). The director's statement that the applicant could have his claim considered under either current or former section 309(a) of the Act was in error because at the time of enactment of the 1986 Act the applicant was not between the ages of fifteen and eighteen. *See id.*

withdrawn. We do, however, affirm the denial of the application based upon the lack of evidence that the applicant's father agreed in writing to provide financial support for the applicant until his eighteenth birthday.

On February 1, 1987, the State of Tamaulipas, Mexico amended its Civil Code, eliminating the distinction between legitimate and illegitimate children. As the Board of Immigration Appeals (BIA) has held: "When a country where a [person] was born . . . eliminates all legal distinctions between children born in wedlock and children born out of wedlock, all natural children are deemed to be the legitimate or legitimated offspring of their natural father from the time that country's laws are changed." *Matter of Moraga*, 23 I&N Dec 195, 199 (BIA 2001) (en banc). The BIA has explained that even though a country may change its laws to confer legitimacy from birth on all children then living, for U.S. immigration purposes, the change must take place prior to the child reaching the age required for legitimation to occur under the applicable provision of the Act. *Id.* (citing *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983)).

In this case, the 1987 Civil Code came into effect when the applicant was two years old and, thus, he may benefit from the change in the law because he became the legitimated child of his father while under the age of eighteen, as required by section 309(a)(4)(A) of the Act. Accordingly, the director's contrary decision is withdrawn.[3]

Although the evidence demonstrates that the applicant was legitimated prior to his eighteenth birthday, the record lacks sufficient evidence that the applicant's father had agreed in writing to provide financial support for him until his eighteenth birthday, as required by section 309(a)(3) of the Act. On appeal, the applicant's father submits an affidavit describing his relationship to the applicant, the applicant's mother, and the applicant's siblings, as well as their living arrangements and the types of support he provided to them. The applicant also submits photographs of the family together. While this evidence suggests that the applicant's father was involved in the applicant's life and provided him with some financial support, there is no contemporaneous documentation in the record whereby the applicant's father agreed in writing to financially provide for the applicant until his eighteenth birthday as is required by section 309(a)(3) of the Act. Consequently, the applicant cannot fulfill the requirements of section 309(a) of the Act and did not acquire U.S. citizenship at birth through his father. The director's determination on this issue is, therefore, affirmed.

Because the applicant has not demonstrated that the applicant's father had agreed in writing to provide financial support for him until his eighteenth birthday, no purpose would be served in evaluating whether the applicant's father met the physical presence requirements set forth in former section 301(a)(7) of the Act. Former and current section 309(a) of the Act both state that the acquisition of citizenship provisions of former section 301(a)(7), now section 301(g) of the Act only apply to children born out of wedlock if they meet the legitimation requirements.

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[3] In his July 21, 2011 affidavit submitted on appeal, the applicant's father stated that the applicant, the applicant's mother, and the applicant's siblings remained in Mexico until the applicant's older sister "was age 11," at which time the family moved to Pharr, Texas. The applicant's older sister turned eleven on [redacted] after enactment of the 1987 Civil Code in Tamaulipas, and therefore, the applicant's legitimation took place in his country of domicile, pursuant to section 101(c) of the Act.

Conclusion

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.

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