

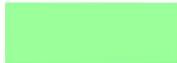
(b)(6)

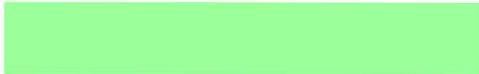


**U.S. Citizenship  
and Immigration  
Services**



DATE: **APR 19 2013** OFFICE: HARLINGEN, TX

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Harlingen, Texas (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on May 7, 1954. The applicant's father was born in the United States on May 21, 1903, and was a U.S. citizen at the time of the applicant's birth. The applicant's mother was born in Mexico and became a naturalized U.S. citizen on May 3, 1996, when the applicant was 41 years-old. The applicant was admitted into the United States as a lawful permanent resident on September 14, 1956. He seeks a certificate of citizenship under former sections 301(a) and 309(a) of the Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1401(a) and 1409(a), based on the claim that he acquired U.S. citizenship at birth through his father.

In a decision dated September 6, 2012, the director determined that the applicant had failed to establish that he was legitimated by his father prior to his 21<sup>st</sup> birthday, as required under section 309(a) of the former Act. The director additionally found that the applicant failed to establish that his father satisfied the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant indicates that evidence in the record establishes his parents were in a common-law marriage in Mexico at the time of his birth; that his father recognized him publicly as his son in Texas prior to his 21<sup>st</sup> birthday; that his father met the U.S. physical presence requirements set forth in the former Act; and that he therefore acquired citizenship at birth through his U.S. citizen father. In support of his assertions, the applicant submits U.S. birth certificate and physical presence evidence for his father, and affidavits from friends and family members.

The entire record was reviewed and considered in rendering a decision on the appeal.

"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." *Chau v. INS*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir., 2000) (citations omitted).

In the present matter it is undisputed that the applicant's parents did not legally marry before or after the applicant's birth. However, common-law marriages were recognized as legally valid in the state of Tamaulipas, Mexico if entered into while Article 70 of the Civil Code of Tamaulipas was in effect between 1940–1961. *Matter of Hernandez*, 14 I&N Dec. 608, 613-14 (AG 1974).

The applicant's birth certificate, issued in Tamaulipas, Mexico on July 11, 1955, reflects that the applicant was born the legitimate son of [REDACTED]. In addition, the applicant's mother states in a sworn affidavit dated December 3, 2012, that she was the common-law wife of the applicant's father from 1953 to 1956, and that during that period she lived with the applicant's father [REDACTED] "in [REDACTED] Tamaulipas, Mexico and then in [REDACTED] Texas, USA." Affidavits submitted on appeal from family members and friends state however, that the applicant's parents lived together in Texas between dates ranging from 1950 to 1957. It is thus not clear that the applicant's parents lived together in Tamaulipas, Mexico at the time of the applicant's birth on May 7, 1954. Moreover, the applicant's sister indicates in a sworn affidavit that the

applicant's father may have been married to another woman at the time he and their mother lived together. See Sworn Affidavit by [REDACTED] dated April 14, 1998 (stating, "[W]e were only able to see our father once in a while, perhaps once or twice a year, because his wife did not approve of his having had a second family.") The applicant's father's death certificate also indicates that at the time of his death in July 1997, his marital status was widowed.

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In the present matter, evidence in the record indicates that the applicant's parents may not have lived together in Tamaulipas, Mexico when the applicant was born. Evidence indicates further that the applicant's father may have been legally married to another woman when he and the applicant's mother lived together. The applicant thus failed to establish that his parents were in a valid common-law marriage in Tamaulipas, Mexico when he was born. Accordingly, the AAO finds that the applicant was born out of wedlock.

Because the applicant was born out of wedlock prior to November 14, 1986, and he was over the age of eighteen on November 14, 1986, the legitimation requirements contained in section 309 of the former Act apply to his case. Prior to November 14, 1986, section 309 of the former Act provided in pertinent part that:

- (a) The provisions of paragraphs (3)(4)(5), and (7) of section 301(a) . . . 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.<sup>1</sup>

Legitimation can take place under the law of the child's or the father's residence or domicile. See section 101(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c).

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.

---

<sup>1</sup> Subsequent amendments made to the Act in 1986 provided that a new section 309(a) applied to persons who had not attained eighteen years of age as of the November 14, 1986, date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Amendments provided further that the former section 309(a) applied to any individual who had attained 18 years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. See section 13 of the INAA, *supra*. See also section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.

In the present matter, the applicant failed to establish that his parents were married, or that he was legitimated by his father pursuant to the laws in the State of Tamaulipas, Mexico. The applicant also failed to establish that he was legitimated by his father in accordance with legitimation laws in Texas, prior to his 21<sup>st</sup> birthday.

Section 13.21 of the Texas Family Code in existence prior to the applicant's 21<sup>st</sup> birthday provided, in pertinent part that:

If a statement of paternity has been executed by the father of an illegitimate child, the father . . . may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

- (a) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:
- 1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;
  - 2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
  - 3) the mother or the managing conservator, if any, has consented to the decree.

The record lacks evidence of a court decree establishing the applicant's father's paternity over the applicant, as required under section 13.21 of the Texas Family Code.

Because the applicant failed to establish that he was legitimated by his U.S. citizen father prior to his 21<sup>st</sup> birthday, he failed to meet the requirements for acquiring citizenship as set forth in section 309(a) of the former Act. Accordingly, we do not reach the issue of whether the applicant's father met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act.

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.