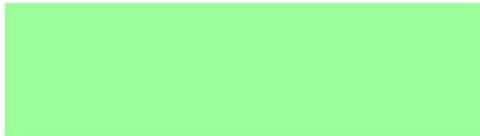


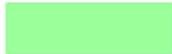


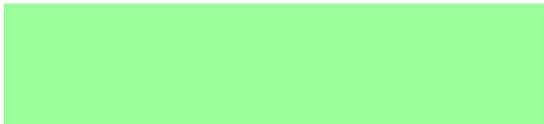
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **DEC 11 2013** Office: SAN DIEGO, CA

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The appeal was denied by the District Director, San Diego, California, 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 in Mexico on May 15, 1970. The applicant claims that his father is [REDACTED] born in Texas on August 13, 1939. The applicant's mother is not a U.S. citizen. The applicant states that his parents were married on August 21, 1985. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's citizenship claim upon finding, in relevant part, that he had failed to establish that his father was physically present in the United States for the statutorily required period of time. The director also noted that the applicant failed to submit his sister's birth certificate as was requested.

On appeal, the applicant asserts that his father was physically present in the United States as is statutorily required. *See* Appeal Brief. The applicant states that the record, by a preponderance of the evidence, establishes that his father was born in the United States in 1939, and remained in the United States until his death in 2002. *Id.*

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 1970. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), as in effect in 1970, is therefore applicable to his case.¹

Former section 301(a)(7) 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 ten years, at least five of which were after attaining the age of fourteen years

The record reflects that the applicant was born out of wedlock. Section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the conditions specified in section 309 of the Act.

¹ The Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, re-designated former section 301(a)(7) of the Act as section 301(g). The substantive requirements of the provision, however, remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

Prior to November 14, 1986, former section 309 of the Act required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 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). The amendments further provided, however, 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.

The applicant asserts that although [REDACTED] is listed as his father on his birth certificate, [REDACTED] is his biological father. The record does not establish, by a preponderance of the evidence, that [REDACTED] was the applicant's father. The applicant's birth certificate lists [REDACTED] as his father. There is no indication in the record that Mr. [REDACTED] and Mr. [REDACTED] are the same person. The applicant submitted the results of a DNA test indicating that he and [REDACTED] are biological siblings, but this evidence does not establish either of their relationship to [REDACTED]. Even if the applicant could demonstrate that he is the son of [REDACTED] born August 13, 1939 in Texas, the record does not establish that his purported father was physically present in the United States for 10 years prior to 1970, five of which were after 1953.

The evidence with respect to the applicant's purported father's physical presence prior to the applicant's birth in 1970 includes the birth certificate establishing his birth in 1939, a 1940 census record, a 1968 marriage certificate, and a child support petition dated in 1966. The applicant asserts that these documents establish that it is more likely than not that his father was physically present in the United States for ten years. The AAO disagrees. Other than the evidence that the applicant's purported father was born in the United States and was here during the 1940 census, there is no evidence that he was physically present in the United States except at some time in 1968 when he married. The applicant has not submitted any employment or medical records, affidavits, school transcripts, receipts or financial documents, or any other evidence relating to his father's presence during the relevant prior to 1970. The record does not indicate where the applicant's sister was born, or when. The record also does not indicate where the applicant's mother was residing, or where the applicant's parents met. The applicant has failed to establish, by a preponderance of the evidence that his purported father was physically present in the United States for 10 years prior to 1970, five of which were after 1953.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.