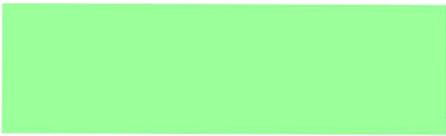




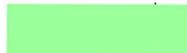
U.S. Citizenship
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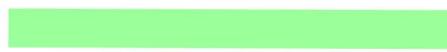


Date: **FEB 26 2013**

Office: SAN ANTONIO, TX

FILE: 

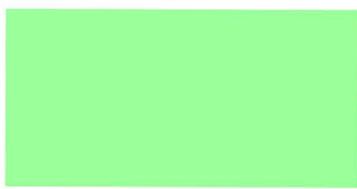
IN RE:

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:

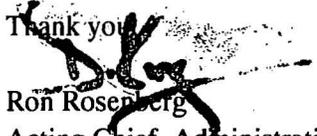


INSTRUCTIONS:

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 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 was denied by the Field Office Director, San Antonio, 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 September 8, 1991 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father was born in Laredo, Texas on December 29, 1965. The applicant was born out of wedlock. He 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)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a)(3), as amended.

On appeal, the applicant, through counsel, maintains that his father's Affidavit of Paternity, executed in 2011, satisfies the requirement of section 309(a)(3) of the Act and establishes his agreement to support the applicant until his eighteenth birthday. See Appeal Brief. Counsel claims that section 309(a)(3) of the Act does not require that the agreement to provide financial support be executed prior to the child's eighteenth birthday. *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 1991. Section 301(g) of the Act, 8 U.S.C. § 1401, 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 establishes 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.

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 applicant's paternity and legitimation are not at issue in this case. The applicant's father's U.S. citizenship has been established. The question remains whether the applicant's father agreed in writing to provide financial support for the applicant until his eighteenth birthday.

The applicant maintains that the language of section 309(a)(3) of the Act, specifically the omission of the phrase "while the person is under the age of 18 years," necessarily means that the applicant's father's written agreement of support satisfies the requirement of subsection (3) even though it was executed after his eighteenth birthday. Counsel states that the requirement in subsection (3) must be read in context, and that if Congress had intended for the financial support agreement to be completed prior to a child's eighteenth birthday the phrase "while the person is under the age of 18 years" would have been included in subsection (3). *See* Appeal Brief at 4. Counsel's does not offer any legal support for her interpretation of this subsection, nor does the AAO find it persuasive.

Section 309(a)(3) of the Act states that the applicant must demonstrate that his father "has agreed in writing to provide financial support for [him] until [he] reaches the age of 18 years." The plain reading of section 309(a)(3) of the Act requires that the applicant submit evidence that his father agreed in writing to financially provide for him prior to his eighteenth birthday. *See* 7 FAM 1133.4-2. The written financial support agreement requirement necessarily means an agreement executed prior to the person's eighteenth birthday when read in context. Further, the requirement includes the word "has," indicating that a father's written support agreement must reflect the father's prospective willingness to financially support the child until his eighteenth birthday.

The record in this case does not contain any evidence of the applicant's father's written agreement to financially support him until his 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.