



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: **JUL 05 2013**

OFFICE: LAS VEGAS, NV [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:

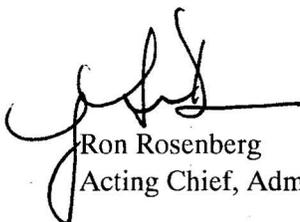
[REDACTED]

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Las Vegas, Nevada (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on February 26, 1973. The applicant's father was born in the United States, and is a U.S. citizen. The applicant's mother was born in Mexico, and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301 of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

In a decision dated December 7, 2012, the director determined that the applicant had failed to establish that he was legitimated by his father before his 21<sup>st</sup> birthday. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence establishes that his father had emotional and financial ties to him throughout his childhood, and that a *bona fide* parent-child relationship existed as defined in section 101(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1).<sup>1</sup> Counsel submits no new evidence on appeal. Previously submitted evidence includes the applicant's birth certificate and birth announcement; his parent's marriage certificate and divorce decree; letters and sworn statements from the applicant's father, mother, and paternal grandmother; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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." *Chau v. INS*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in 1973. Accordingly, section 301(a)(7) of the former Act controls his claim to citizenship.<sup>2</sup>

Former section 301(a)(7) of the Act provided in pertinent part that the following shall be citizens of the United States at birth:

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<sup>1</sup> Section 101(b)(1) of the Act is inapplicable to the applicant's acquisition of U.S. citizenship claim. Rather, section 101(c) of the Act, 8 U.S.C. § 1101(c), applies to the definition of "child" for citizenship purposes.

<sup>2</sup> 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).

[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.

Because the applicant was born out of wedlock, he must first satisfy the provisions set forth in current section 309(a) of the Act, 8 U.S.C. § 1409(a)<sup>3</sup>, which states, in pertinent part:

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 has not satisfied subsections (3) and (4) of section 309(a) of the Act. First, the record contains no evidence of a written agreement by the applicant's father to support the applicant financially until he reached the age of 18, as required under section 309(a)(3) of the Act. Second, subsection 309(a)(4)(A) of the Act requires legitimation under the law of the child's or the father's residence or domicile. See section 101(c) of the Act.

According to an April 2011 advisory opinion from the Library of Congress (LOC 2010-004774), the Civil Code as amended on February 25, 1995, governs parentage in the State of Jalisco. Under the Civil Code, parentage is established with respect to the father by voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child. *Id.* Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in open court. Prior to February

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<sup>3</sup> Section 309(a) was amended by the 1986 Act and applies to persons, such as the applicant, who had not yet attained eighteen years of age or been legitimated on November 14, 1986, the date of enactment.

1995, however, the law in the state of Jalisco indicated that legitimation of a child born out of wedlock occurred upon the marriage of the child's parents. *Id.*

In the present matter, the applicant's birth certificate, issued by the State of Jalisco, Mexico reflects that the applicant was born on [REDACTED] to [REDACTED] and to [REDACTED]. The applicant has presented no evidence that he was voluntarily acknowledged by his father in any of the five ways noted above. While the birth certificate lists the name of the applicant's father, it does not contain any indication that the applicant's father acknowledged the applicant's birth before a Civil Registry Officer. Even if such evidence was provided, the applicant could not benefit from the 1995 amendments to the Civil Code because he was over the age of 21 when the amendments took effect. *Matter of Moraga*, 23 I&N Dec 195, 199 (BIA 2001) (en banc) (citing *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983)). Moreover, although evidence reflects that the applicant's parents did marry after the applicant was born, the marriage occurred on February 26, 1995, when the applicant was 22 years old.

The evidence also fails to demonstrate that the applicant was legitimated by his father in the State of Michigan. Under section 702.83 of the Michigan Compiled Laws Annotated (MCLA) (repealed by Public Acts 1978, No. 642, § 993, eff. July 1, 1979), legitimation of a child born out of wedlock occurred upon the marriage of the parents. *Matter of Cortez*, 16 I&N Dec. 289, 290 (BIA 1977). Here, although the applicant's parents did marry, the marriage did not take place until February 1995, when the applicant was 22 years old. The applicant was therefore not legitimated through the marriage of his parents. *Matter of Moraga, Supra.*

Under former MCLA § 700.111(4), if a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs:

- (a) The man joins with the mother of the child and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act.
- (b) The man joins with the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth of the child.
- (c) The man and the child have borne a mutually acknowledged relationship of parent and child that began before the child became age 18 and continued until terminated by the death of either.
- (d) The man has been determined to be the father of the child and an order of filiation establishing that paternity has been entered as provided in the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws.

The record does not contain any evidence to satisfy subsections (a), (b) or (d) above. Regarding subsection (c), the record contains a November 10, 1994 sworn statement by the applicant's father acknowledging paternity over the applicant; however, the applicant was 21 years old at the time the statement was signed and this statement is, therefore, not evidence of a "mutually acknowledged relationship of parent and child that began before the child became age 18." In addition, while the record contains letters from the applicant's father to the applicant's mother that mention the applicant, they are insufficient to demonstrate that the applicant and his father had borne a mutually acknowledged relationship before the applicant turned 18 in February 1991. Accordingly, the applicant was not legitimated under the laws of Mexico or Michigan as required by subsection 309(a)(4)(A) of the Act.

Regarding subsections 309(a)(4)(B) and (C) of the Act, while the applicant's father executed a sworn statement declaring his paternity, such statement was executed after the applicant turned 18, and there is no evidence that the applicant's paternity was established by adjudication of a competent court.

Based on the above discussion, 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.

Because the applicant has not demonstrated that he meets the requirements of current section 309(a) of the Act, 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. *See* former section 309(a) of the Act (stating that former section 301(a)(7) of the Act only applied to children born out of wedlock if they met the legitimation requirements).

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 meet his burden of establishing eligibility for a certificate of citizenship under sections 309(a) of the Act and 301(a)(7) of the former Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.