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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: **JUL 24 2013**

Office: SAN ANTONIO, TX

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former Sections 301(a)(7) and 309(a) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) and 1409(a)(1971).

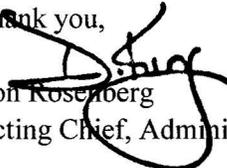
ON BEHALF OF APPLICANT:  
[REDACTED]

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  
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 July 6, 1971 in Tamaulipas, Mexico. The applicant's father, [REDACTED] was born in the United States on November 20, 1912. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization in 2006, after the applicant's eighteenth birthday. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The Field Office Director concluded that the applicant was not legitimated under the laws of the State of Tamaulipas, Mexico. *See* Decision of the Field Office Director, dated June 20, 2012. The application was denied based upon the applicant's failure to establish that she was legitimated prior to the age of 21 as is required by former section 309(a) of the Act. The decision further states that the applicant did not fulfill the additional requirements of section 309(a) of the Act, as amended, or the physical presence requirement of former section 301(a)(7) of the Act.

On appeal, the applicant, through counsel, contends that she was the biological child of [REDACTED] that she was legitimated in accordance with the applicable laws of the State of Tamaulipas, and that she acquired U.S. citizenship at birth through her father. *See* Appeal Brief.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1971. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to her case.

Former section 301(a)(7) of the Act stated, in pertinent 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: *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.

The record reflects that the applicant was born out of wedlock. Her parents were never married to each other. Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the requirements of section 309(a) of the Act.<sup>1</sup>

Former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to 1986, required only that an out-of wedlock child establish that he or she was legitimated prior to the age of 21. Amendments made to the Act in 1986 included a new section 309(a) applicable to persons, like the applicant, 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. As discussed in more detail below, the applicant was not legitimated prior to November 14, 1986. Thus, section 309(a) of the Act, as amended, is applicable to her case.

The AAO notes that the record contains two birth certificates, both issued by the State of Tamaulipas, Mexico. The applicant's first birth certificate, bearing a 1972 registration date, lists [REDACTED] as her father. The applicant's second birth certificate, bearing a 1976 registration date, lists [REDACTED] as the applicant's father. The applicant has also submitted DNA test results establishing that she is biologically related to [REDACTED] her half-sister. The AAO finds that the applicant has established that [REDACTED] was her biological father.

The question remains whether the applicant was legitimated by [REDACTED]. According to a 2012 Library of Congress (LOC) report, the applicable law in Mexico relating to domestic relations issues, including legitimation, is the civil code of the states and not federal law. *See*

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<sup>1</sup> 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.

LOC Report 2012-008315. The 2012 LOC report concludes that under the Civil Code for the State of Tamaulipas promulgated in 1987 (the 1987 Civil Code), and applicable in this case because the applicant was under the age of 18 on its effective date, filiation of children born out of wedlock is accomplished by voluntary acknowledgement by the father or a court judgment declaring paternity. *Id.* at 7 (citing Article 321).<sup>2</sup> Acknowledgment under the 1987 Civil Code may be accomplished in a number of ways, including on the birth record, through an acknowledgement proceeding, on the marriage certificate of the parents, by a notarized document, under a will, by an admission in open court, and by a final judgment. *Id.* at 7 (citing Article 331 of the 1987 Civil Code). As noted above, the record contains two birth certificates for the applicant and only the one registered in 1972 lists [REDACTED] as the applicant's father. The 1972 registration was made by the applicant's mother, and therefore does not serve as an acknowledgment of paternity by the applicant's father. The applicant's second birth certificate does not list [REDACTED] as the applicant's father. The applicant's parents were not married to each other, and there is no other evidence in the record to establish that [REDACTED] otherwise acknowledged paternity of the applicant as provided in Article 331 of the 1987 Civil Code. Therefore, the applicant was not legitimated or acknowledged under the applicable law in the State of Tamaulipas, Mexico.

The AAO additionally finds that the applicant failed to establish she was legitimated by her father in accordance with legitimation laws in Texas.

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

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.

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<sup>2</sup> The 1987 Civil Code does not contain a legitimation provision, in contrast to the Civil Code previously in effect (the 1961 Civil Code) which specifically provided that legitimation of a child born out of wedlock was accomplished by the subsequent marriage of the parents and express acknowledgment of the child. *Id.* at 8

The record in the present case does not contain a court decree indicating that the applicant's father took any action to legitimate the applicant under section 13.21 of the Texas Family Code. The applicant therefore was also not legitimated under the laws of the State of Texas.

Having found that the applicant was not legitimated, it is unnecessary to determine the question of the applicant's father's physical presence in the United States. The AAO notes that the applicant also did not establish that her father agreed in writing to provide for her financial support as is required by section 309(a) of the Act, as amended. The applicant cannot establish that she was legitimated and therefore, she did not acquire U.S. citizenship at birth under former sections 301 and 309 of the Act, section 309(a) of the Act, as amended, or any other provision of law.

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.